

**UNITED STATES
NUCLEAR REGULATORY COMMISSION STAFF
PRACTICE AND PROCEDURE DIGEST**

**Commission, Appeal Board and Licensing Board Decisions
July 1972 - June 1985**

Manuscript Completed: September 1985
Date Published: January 1986

Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

8602180031 850131
PDR NUREG
0386 R PDR

NOTICE

Availability of Reference Materials Cited in NRC Publications

Most documents cited in NRC publications will be available from one of the following sources:

1. The NRC Public Document Room, 1717 H Street, N.W.
Washington, DC 20555
2. The Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082,
Washington, DC 20013-7082
3. The National Technical Information Service, Springfield, VA 22161

Although the listing that follows represents the majority of documents cited in NRC publications, it is not intended to be exhaustive.

Referenced documents available for inspection and copying for a fee from the NRC Public Document Room include NRC correspondence and internal NRC memoranda; NRC Office of Inspection and Enforcement bulletins, circulars, information notices, inspection and investigation notices; Licensee Event Reports; vendor reports and correspondence; Commission papers; and applicant and licensee documents and correspondence.

The following documents in the NUREG series are available for purchase from the GPO Sales Program: formal NRC staff and contractor reports, NRC-sponsored conference proceedings, and NRC booklets and brochures. Also available are Regulatory Guides, NRC regulations in the *Code of Federal Regulations*, and *Nuclear Regulatory Commission Issuances*.

Documents available from the National Technical Information Service include NUREG series reports and technical reports prepared by other federal agencies and reports prepared by the Atomic Energy Commission, forerunner agency to the Nuclear Regulatory Commission.

Documents available from public and special technical libraries include all open literature items, such as books, journal and periodical articles, and transactions. *Federal Register* notices, federal and state legislation, and congressional reports can usually be obtained from these libraries.

Documents such as theses, dissertations, foreign reports and translations, and non-NRC conference proceedings are available for purchase from the organization sponsoring the publication cited.

Single copies of NRC draft reports are available free, to the extent of supply, upon written request to the Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Copies of industry codes and standards used in a substantive manner in the NRC regulatory process are maintained at the NRC Library, 7920 Norfolk Avenue, Bethesda, Maryland, and are available there for reference use by the public. Codes and standards are usually copyrighted and may be purchased from the originating organization or, if they are American National Standards, from the American National Standards Institute, 1430 Broadway, New York, NY 10018.

NRC STAFF PRACTICE AND PROCEDURE DIGEST

FOURTH EDITION

UPDATE, September 1985

INSTRUCTIONS FOR REPLACEMENT OF PAGES

The September, 1985 Update replaces all previous pages.

UNITED STATES NUCLEAR REGULATORY COMMISSION

STAFF PRACTICE AND PROCEDURE DIGEST

(The September, 1985 Update includes Commission, Appeal Board, and Licensing Board Decisions issued from July 1, 1972 through June 30, 1985.)

PREFACE

This fourth edition of the NRC Staff Practice and Procedure Digest contains digests of a number of Commission, Atomic Safety and Licensing Appeal Board, and Atomic Safety and Licensing Board decisions issued during the period from July 1, 1972 to June 30, 1985 interpreting the NRC's Rules of Practice in 10 CFR Part 2. This fourth edition replaces earlier editions and supplements and includes appropriate changes reflecting the amendments to the Rules of Practice effective through June 30, 1985.

The Practice and Procedure Digest was originally prepared by attorneys in the NRC's Office of the Executive Legal Director as an internal research tool. Because of its proven usefulness to those attorneys, it was decided that it might also prove useful to members of the public. Accordingly, the decision was made to publish the Digest and subsequent editions thereof. This edition of the Digest was prepared by attorneys from Aspen Systems Corporation pursuant to Contract number 14-85-392.

Persons using this Digest are placed on notice that it may not be used as an authoritative citation in support of any position before the Commission or any of its adjudicatory tribunals. Persons using this Digest are also placed on notice that it is intended for use only as an initial research tool, that it may, and likely does, contain errors, including errors in analysis and interpretation of decisions, and that the user should not rely on the Digest analyses and interpretations but must read, analyze and rely on the user's own analysis of the actual Commission, Appeal Board and Licensing Board decisions cited. Further, neither the United States, the Nuclear Regulatory Commission, Aspen Systems Corporation, nor any of their employees makes any expressed or implied warranty or assumes liability or responsibility for the accuracy, completeness or usefulness of any material presented in the Digest.

The Digest is roughly structured in accordance with the chronological sequence of the nuclear facility licensing process as set forth in Appendix A to 10 CFR Part 2. Those decisions which did not fit into that structure are dealt with in a section on "general matters." Where appropriate, particular decisions are indexed under more than one heading. Some topical headings contain no decision citations or discussion. It is anticipated that future updates to the Digest will utilize these headings.

This edition of the Digest will be updated in the future. The updates will be prepared in the form of replacement pages.

We hope that the Digest will prove to be as useful to the members of the public as it has been to the members of the Office of the Executive Legal Director. We would appreciate from the users of the Digest any comments or suggestions which would serve to improve its usefulness.

Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission

TABLE OF CONTENTS

NOTE

References are to Chapter Title and page number.

	<u>Chapter</u>	<u>Abbreviation</u>
	Applications for License/Permit	An
	Prehearing Matters	Pre
	Hearings	H
	Post Hearing Matters	PH
	Appeals	APP
	General Matters	GM
1.0	APPLICATION FOR LICENSE/PERMIT	An 1
1.1	<u>Applicants</u>	An 1
1.2	<u>Renewal Applications</u>	An 1
1.3	<u>Applications for Early Site Review</u>	An 1
1.4	<u>Form of Application for Construction Permit/Operating License</u>	An 2
1.4.1	Form of Application for Initial License/Permit	An 2
1.4.2	Form of Renewal Application for License/Permit	An 2
1.5	<u>Contents of Application</u>	An 2
1.5.1	Incomplete Applications	An 2
1.5.2	Material False Statements in Applications	An 2
1.6	<u>Docketing of License/Permit Application</u>	An 5
1.7	<u>Notice of License/Permit Application</u>	An 5
1.7.1	Publication of Notice in Federal Register	An 5
1.7.2	Amended Notice After Addition of New Owners	An 6
1.7.3	Notice on License Renewal	An 6
1.8	<u>Staff Review of License/Permit Application</u>	An 6
1.9	<u>Withdrawal of Application for License/Permit</u>	An 8
1.10	<u>Abandonment of Application for License/Permit</u>	An 13
2.0	PREHEARING MATTERS (SEE 3.3)	Pre 1
2.1	<u>Scheduling of Hearings</u> (SEE 3.3.1 to 3.3.5.2)	Pre 1

2.2	<u>Necessity of Hearing</u>	Pre 1
2.3	<u>Location of Hearing</u>	Pre 2
2.3.1	Public Interest Requirements Affecting Hearing Location (Reserved)	Pre 2
2.3.2	Convenience of Litigants Affecting Hearing Location (SEE 3.3.5.2)	Pre 3
2.4	<u>Issues for Hearing</u> (SEE 3.4 to 3.4.6)	Pre 3
2.5	<u>Notice of Hearing</u>	Pre 3
2.5.1	Contents of Notice of Hearing	Pre 3
2.5.2	Adequacy of Notice of Hearing	Pre 4
2.5.3	Publication of Notice of Hearing in <u>Federal Register</u>	Pre 4
2.5.4	Requirement to Renote	Pre 5
2.6	<u>Prehearing Conferences</u>	Pre 5
2.6.1	Transcripts of Prehearing Conferences	Pre 6
2.6.2	Special Prehearing Conferences	Pre 6
2.6.3	Prehearing Conference Order	Pre 6
2.6.3.1	Effect of Prehearing Conference Order	Pre 7
2.6.3.2	Objections to Prehearing Conference Order	Pre 7
2.6.3.3	Appeal from Prehearing Conference Order	Pre 7
2.7	<u>Conference Calls</u>	Pre 7
2.8	<u>Prehearing Motions</u>	Pre 8
2.8.1	Prehearing Motions Challenging ASLB Composition	Pre 8
2.8.1.1	Contents of Motion Challenging ASLB Composition	Pre 8
2.8.1.2	Evidence of Bias in Challenges to ASLB Composition	Pre 9
2.8.1.3	Waiver of Challenges to ASLB Composition	Pre 9
2.9	<u>Intervention</u>	Pre 10
2.9.1	General Policy on Intervention	Pre 10
2.9.2	Intervenor's Need for Counsel	Pre 10
2.9.3	Petitions to Intervene	Pre 11
2.9.3.1	Pleading Requirements	Pre 15
2.9.3.2	Defects in Pleadings	Pre 19
2.9.3.3	Time Limits/Late Petitions	Pre 19
2.9.3.3.1	Time for Filing Intervention Petitions	Pre 20
2.9.3.3.2	Sufficiency of Notice of Time Limits on Intervention	Pre 20
2.9.3.3.3	Consideration of Untimely Petitions to Intervene	Pre 21
2.9.3.3.4	Appeals from Rulings on Late Intervention	Pre 34
2.9.3.3.5	Mootness of Petitions to Intervene	Pre 35
2.9.3.4	Amendment of Petition Expanding Scope of Intervention	Pre 36
2.9.3.5	Withdrawal of Petition to Intervene	Pre 36
2.9.3.6	Intervention in Antitrust Proceedings	Pre 37
2.9.4	Interest and Standing for Intervention	Pre 39
2.9.4.1	Judicial Standing to Intervene	Pre 40
2.9.4.1.1	"Injury-in-Fact" and "Zone of Interest" Tests for Standing to Intervene	Pre 41

2.9.4.1.2	Standing of Organizations to Intervene	Pre 48
2.9.4.1.3	Standing to Intervene in Export Licensing Cases	Pre 52
2.9.4.1.4	Standing to Intervene in Specific Factual Situations	Pre 53
2.9.4.2	Discretionary Intervention	Pre 56
2.9.5	Contentions of Intervenor	Pre 58
2.9.5.1	Pleading Requirements for Contentions	Pre 62
2.9.5.2	Requirement of Oath from Intervenor	Pre 67
2.9.5.3	Requirement of Contentions for Purposes of Admitting Petitioner as a Party	Pre 67
2.9.5.4	Material Used in Support of Contentions	Pre 69
2.9.5.5	Timeliness of Submission of Contentions	Pre 70
2.9.5.6	Contentions Challenging Regulations	Pre 78
2.9.5.7	Contentions Involving Generic Issues	Pre 79
2.9.5.8	Contentions Challenging Absent or Incomplete Documents	Pre 82
2.9.5.9	Contentions re Adequacy of Security Plan	Pre 83
2.9.5.10	Defective Contentions	Pre 83
2.9.5.11	Discovery to Frame Contentions	Pre 83
2.9.5.12	Stipulations on Contentions (Reserved)	Pre 83
2.9.5.13	Appeals of Rulings on Contentions	Pre 83
2.9.6	Conditions on Grants of Intervention	Pre 84
2.9.7	Appeals of Rulings on Intervention	Pre 84
2.9.7.1	Standards for Reversal of Rulings on Intervention	Pre 86
2.9.8	Reinstatement of Intervenor After Withdrawal	Pre 87
2.9.9	Rights of Intervenor at Hearing	Pre 87
2.9.9.1	Burden of Proof	Pre 88
2.9.9.2	Presentation of Evidence	Pre 89
2.9.9.2.1	Affirmative Presentation by Intervenor/Participants	Pre 89
2.9.9.2.2	Consolidation of Intervenor Presentations	Pre 89
2.9.9.3	Cross-Examination by Intervenor	Pre 90
2.9.9.4	Intervenor's Right to File Proposed Findings	Pre 90
2.9.9.5	Attendance at/Participation in Prehearing Conferences/Hearings	Pre 91
2.9.9.6	Pleadings and Documents of Intervenor	Pre 92
2.9.10	Cost of Intervention	Pre 92
2.9.10.1	Financial Assistance to Intervenor	Pre 92
2.9.10.2	Intervenor's Witnesses	Pre 94
2.9.11	Appeals by Intervenor	Pre 95
2.9.12	Intervention in Remand Proceedings	Pre 95
2.10	<u>Nonparty Participation - Limited Appearance and Interested States</u>	Pre 95
2.10.1	Limited Appearances in NRC Adjudicatory Proceedings	Pre 95
2.10.1.1	Requirements for Limited Appearance	Pre 95
2.10.1.2	Scope/Limitations of Limited Appearances	Pre 95
2.10.2	Participation by Nonparty Interested States	Pre 96
2.11	<u>Discovery</u>	Pre 100

2.11.1	Time for Discovery	Pre 100
2.11.2	Discovery Rules	Pre 102
2.11.2.1	Construction of Discovery Rules	Pre 105
2.11.2.2	Scope of Discovery	Pre 105
2.11.2.3	Requests for Discovery During Hearing	Pre 107
2.11.2.4	Privileged Matter	Pre 107
2.11.2.5	Protective Orders	Pre 116
2.11.2.6	Work Product	Pre 118
2.11.2.7	Updating Discovery Responses	Pre 118
2.11.2.8	Interrogatories	Pre 118
2.11.3	Discovery Against the Staff	Pre 120
2.11.4	Responses to Discovery Requests	Pre 121
2.11.5	Compelling Discovery	Pre 122
2.11.5.1	Compelling Discovery From ACRS and ACRS Consultants	Pre 125
2.11.5.2	Sanctions for Failure to Comply with Discovery Orders	Pre 125
2.11.6	Appeals of Discovery Rulings	Pre 127
3.0	HEARINGS	H 1
3.1	<u>Licensing Board</u>	H 1
3.1.1	<u>General Role of Licensing Board</u>	H 1
3.1.2	Powers/Duties of Licensing Board	H 3
3.1.2.1	Scope of Jurisdiction of Licensing Board	H 4
3.1.2.1.1	Authority in Construction Permit Proceedings Distinguished From Authority in Operating License Proceedings	H 10
3.1.2.2	Scope of Authority to Rule on Petitions and Motions	H 12
3.1.2.3	Authority of Licensing Board to Raise <u>Sua Sponte</u> Issues	H 14
3.1.2.4	Expedited Proceedings; Timing of Rulings	H 17
3.1.2.5	Licensing Board's Relationship with the NRC Staff	H 19
3.1.2.6	Licensing Board's Relationship with Other Agencies	H 23
3.1.2.7	Conduct of Hearing by Licensing Board	H 24
3.1.3	Quorum Requirements for Licensing Board Hearing	H 28
3.1.4	Disqualification of a Licensing Board Member	H 28
3.1.4.1	Motion to Disqualify Adjudicatory Board Member	H 28
3.1.4.2	Grounds for Disqualification of Adjudicatory Board Member	H 30
3.1.4.3	Improperly Influencing an Adjudicatory Board Decision	H 34
3.1.5	Resignation of a Licensing Board Member	H 34
3.2	<u>Export Licensing Hearings</u>	H 35
3.2.1	<u>Scope of Export Licensing Hearings</u>	H 35
3.3	<u>Hearing Scheduling Matters</u>	H 35
3.3.1	<u>Scheduling of Hearings</u>	H 35
3.3.1.1	Public Interest Requirements re Hearing Schedule	H 37
3.3.1.2	Convenience of Litigants re Hearing Schedule	H 37
3.3.1.3	Adjourned Hearings (Reserved)	H 38
3.3.2	Postponement of Hearings	H 38

3.3.2.1	Factors Considered in Hearing Postponement	H 38
3.3.2.2	Effect of Plant Deferral on Hearing Postponement	H 38
3.3.2.3	Sudden Absence of ASLB Member at Hearing	H 39
3.3.2.4	Time Extensions for Case Preparation Before Hearing	H 39
3.3.3	Scheduling Disagreements Among Parties	H 40
3.3.4	Appeals of Hearing Date Rulings	H 40
3.3.5	Location of Hearing (Reserved)	H 41
3.3.5.1	Public Interest Requirements re Hearing Location (Reserved)	H 41
3.3.5.2	Convenience of Litigants Affecting Hearing Location	H 41
3.3.6	Consolidation of Hearings	H 41
3.3.7	<u>In Camera Hearings</u>	H 42
3.4	<u>Issues for Hearing</u>	H 43
3.4.1	Intervenor's Contentions - Admissibility at Hearing	H 45
3.4.2	Issues Not Raised by Parties	H 48
3.4.3	Issues Not Addressed by a Party	H 49
3.4.4	Separate Hearings on Special Issues	H 50
3.4.5	Construction Permit Extension Proceedings	H 51
3.4.6	Export Licensing Proceedings Issues	H 53
3.5	<u>Summary Disposition</u>	H 53
	(SEE ALSO 5.8.5)	
3.5.1	Use of Summary Disposition	H 56
3.5.1.1	Construction Permit Hearings	H 56
3.5.1.2	Amendments to Existing Licenses	H 56
3.5.2	Motions for Summary Disposition	H 56
3.5.2.1	Time for Filing Motions for Summary Disposition	H 58
3.5.2.2	Time for Filing Response to Summary Disposition Motion	H 59
3.5.2.3	Contents of Motions/Responses (Summary Disposition)	H 59
3.5.3	Summary Disposition Rules	H 60
3.5.4	Content of Summary Disposition Order	H 64
3.5.5	Appeals From Rulings on Summary Disposition	H 64
3.6	<u>Attendance at and Participation in Hearings</u>	H 64
3.7	<u>Burden and Means of Proof</u>	H 66
3.7.1	Duties of Applicant/Licensee	H 67
3.7.2	Intervenor's Contentions - Burden and Means of Proof	H 68
3.7.3	Specific Issues - Means of Proof	H 70
3.7.3.1	Exclusion Area Controls	H 70
3.7.3.2	Need for Facility	H 71
3.7.3.3	Burden and Means of Proof in Interim Licensing Suspension Cases	H 72
3.7.3.4	Availability of Uranium Supply	H 73
3.7.3.5	Environmental Costs (Reserved)	H 73
3.7.3.5.1	Cost of Withdrawing Farmland from Production (SEE ALSO 6.15.6.1.1)	H 73
3.7.3.6	Alternate Sites Under NEPA	H 74
3.7.3.7	Management Capability	H 74

3.8	<u>Burden of Persuasion (Degree of Proof)</u>	H 75
3.8.1	<u>Environmental Effects Under NEPA</u>	H 75
3.9	<u>Stipulations</u>	H 75
3.10	<u>Official Notice of Facts</u>	H 76
3.11	<u>Evidence</u>	H 77
3.11.1	<u>Rules of Evidence</u>	H 78
3.11.1.1	Admissibility of Evidence	H 78
3.11.1.1.1	Admissibility of Hearsay Evidence	H 79
3.11.1.2	Hypothetical Questions	H 80
3.11.1.3	Reliance On Scientific Treatises, Newspapers, Periodicals	H 80
3.11.1.4	Off-the-Record Comments	H 80
3.11.1.5	Presumptions and Inferences	H 80
3.11.1.6	Government Documents	H 81
3.11.2	Status of ACRS Letters	H 81
3.11.3	Presentation of Evidence by Intervenors	H 82
3.11.4	Evidentiary Objections	H 82
3.12	<u>Witnesses at Hearing</u>	H 82
3.12.1	<u>Compelling Appearance of Witness</u>	H 83
3.12.1.1	NRC Staff as Witnesses	H 83
3.12.1.2	ACRS Members as Witnesses	H 84
3.12.2	Sequestration of Witnesses	H 84
3.12.3	Board Witnesses	H 84
3.12.4	Expert Witnesses	H 86
3.12.4.1	Fees for Expert Witnesses	H 87
3.13	<u>Cross-Examination</u>	H 87
3.13.1	Cross-Examination by Intervenors	H 88
3.13.2	Cross-Examination by Experts	H 91
3.13.3	Inability to Cross-Examine as Grounds to Reopen	H 91
3.14	<u>Record of Hearing</u>	H 92
3.14.1	Supplementing Hearing Record by Affidavits	H 92
3.14.2	Reopening Hearing Record	H 92
3.14.3	Material Not Contained in Hearing Record	H 95
3.15	<u>Interlocutory Review via Directed Certification</u>	H 95
3.16	<u>Licensing Board Findings</u>	H 97
3.16.1	Independent Calculations by Licensing Board	H 100
3.17	<u>Res Judicata and Collateral Estoppel</u>	H 100
3.18	<u>Termination of Proceedings</u>	H 106
3.18.1	Procedures for Termination	H 106
3.18.2	Post-Termination Authority of Commission	H 106

4.0	POST HEARING MATTERS	PH 1
4.1	<u>Settlements and Stipulations</u>	PH 1
4.2	<u>Proposed Findings</u>	PH 1
4.2.1	<u>Intervenor's Right to File Proposed Findings</u>	PH 2
4.2.2	<u>Failure to File Proposed Findings</u>	PH 2
4.3	<u>Initial Decisions</u>	PH 3
4.3.1	<u>Reconsideration of Initial Decision</u>	PH 6
4.4	<u>Reopening Hearings</u>	PH 7
4.4.1	<u>Motions to Reopen Hearing</u>	PH 8
4.4.1.1	Time for Filing Motion to Reopen Hearing	PH 10
4.4.1.2	Contents of Motion to Reopen Hearing (Reserved)	PH 11
4.4.2	Grounds for Reopening Hearing (SEE ALSO 3.13.3)	PH 11
4.4.3	Reopening Construction Permit Hearings to Address New Generic Issues	PH 16
4.4.4	Discovery to Obtain Information to Support Reopening of Hearing	PH 16
4.5	<u>Motions to Reconsider</u>	PH 17
4.6	<u>Sua Sponte Review by the Appeal Board</u>	PH 18
4.7	<u>Motions for Post-Judgment Relief</u>	PH 22
5.0	APPEALS	App 1
5.1	<u>Right to Appeal</u>	App 1
5.2	<u>Who Can Appeal</u>	App 2
5.3	<u>How to Appeal</u>	App 3
5.4	<u>Time for Filing Appeals</u>	App 4
5.5	<u>Matters Considered on Appeal</u>	App 7
5.5.1	Issues Raised for the First Time on Appeal	App 8
5.5.2	Effect on Appeal of Failure to File Proposed Findings	App 9
5.5.3	Matters Considered on Appeal of Ruling Allowing Late Intervention	App 9
5.5.4	Consolidation of Appeals on Generic Issues	App 10
5.6	<u>Appeal Board Action</u>	App 10
5.6.1	<u>Role of Appeal Board</u>	App 10
5.6.2	Parties' Opportunity to be Heard on Appeal ¹	App 15
5.6.3	Standards for Reversing Licensing Board on Findings of Fact	App 16
5.6.4	Grounds for Immediate Suspension of Construction Permit by Appeal Board	App 18

5.6.5	Immediate Effectiveness of Appeal Board Decision	App 19
5.6.6	Effect of Appeal Board Affirmance as Precedent	App 19
5.6.6.1	Precedential Effect of Unpublished Opinions of Appeal Boards	App 20
5.6.7	Disqualification of Appeal Board Member	App 20
5.7	<u>Stays Pending Appeal</u>	App 20
5.7.1	Requirements for a Stay Pending Appeal	App 22
5.7.2	Stays Pending Remand After Judicial Review	App 28
5.8	<u>Specific Appealable Matters</u>	App 28
5.8.1	Rulings on Intervention	App 28
5.8.2	Scheduling Orders	App 30
5.8.3	Discovery Rulings	App 31
5.8.3.1	Rulings on Discovery Against Nonparties	App 31
5.8.3.2	Rulings Curtailing Discovery	App 31
5.8.4	Refusal to Compel Joinder of Parties	App 32
5.8.4.1	Order Consolidating Parties	App 32
5.8.5	Order Denying Summary Disposition (SEE ALSO 3.5)	App 32
5.8.6	Procedural Irregularities	App 32
5.8.7	Matters of Recurring Importance	App 33
5.8.8	Advisory Decisions on Trial Rulings	App 33
5.8.9	Order on Pre-LWA Activities	App 33
5.8.10	Partial Initial Decisions	App 33
5.8.11	Other Licensing Actions	App 34
5.8.12	Rulings on Civil Penalties	App 34
5.8.13	Evidentiary Rulings	App 34
5.8.14	Director's Decision on Show Cause Petition	App 35
5.8.15	Findings of Fact	App 35
5.9	<u>Perfecting Appeals</u>	App 35
5.9.1	General Requirements for Appeals from Initial Decision	App 35
5.10	<u>Briefs on Appeal</u>	App 36
5.10.1	Necessity of Brief	App 36
5.10.2	Time for Submittal of Brief	App 36
5.10.2.1	Time Extensions for Brief	App 37
5.10.2.2	Supplementary Briefs	App 38
5.10.3	Contents of Brief	App 38
5.10.3.1	Opposing Briefs	App 41
5.10.4	<u>Amicus Curiae Briefs</u>	App 42
5.11	<u>Oral Argument</u>	App 42
5.11.1	Failure to Appear for Oral Argument	App 42
5.11.2	Grounds for Postponement of Oral Argument	App 42
5.11.3	Oral Argument by Nonparties	App 44
5.12	<u>Actions Similar to Appeals</u>	App 43
5.12.1	Motions to Reconsider	App 43

5.12.2	Interlocutory Reviews	App 44
5.12.2.1	Directed Certification of Questions for Interlocutory Review	App 47
5.12.2.1.1	Effect of Subsequent Developments on Motion to Certify	App 53
5.12.2.1.2	Effect of Directed Certification on Uncertified Issues	App 53
5.12.3	Application to Commission for a Stay After Appeal Board's Denial of Stay	App 53
5.13	<u>Appeals from Orders, Rulings, Initial Decisions, Partial Initial Decisions</u>	App 54
5.13.1	Time for Filing Appeals	App 54
5.13.1.1	Appeals from Initial and Partial Initial Decisions	App 54
5.13.1.2	Variation in Time Limits on Appeals	App 54
5.13.2	Briefs on Appeal	App 55
5.13.3	Effect of Failure to File Proposed Findings	App 55
5.13.4	Motions to Strike Appeals	App 55
5.14	<u>Certification to the Commission</u>	App 56
5.15	<u>Review of Appeal Board Decisions</u>	App 57
5.15.1	Effect of Commission's Refusal to Entertain Appeal	App 58
5.15.2	Stays Pending Judicial Review of Appeal Board Decision	App 58
5.15.3	Stays Pending Remand After Judicial Review	App 59
5.16	<u>Review of Commission Decisions</u>	App 59
5.16.1	Review of Disqualification of a Commissioner	App 59
5.17	<u>Reconsideration by the Commission</u>	App 60
5.18	<u>Jurisdiction of NRC to Consider Matters While Judicial Review is Pending</u>	App 60
5.19	<u>Procedure On Remand</u>	App 61
5.19.1	Jurisdiction of the Licensing Board on Remand	App 61
5.19.2	Jurisdiction of the Appeal Board on Remand	App 62
5.19.3	Stays Pending Remand	App 63
5.19.4	Participation of Parties in Remand Proceedings	App 63
6.0	GENERAL MATTERS	GM 1
6.1	<u>Amendments to Existing Licenses and/or Construction Permits</u>	GM 1
6.1.1	Staff Review of Proposed Amendments (Reserved)	GM 1
6.1.2	Amendments to Research Reactor Licenses (Reserved)	GM 1
6.1.3	Matters to be Considered in License Amendment Proceedings (Reserved)	GM 1
6.1.3.1	Specific Matters Considered in License Amendment Proceedings	GM 1

6.1.4	Hearing Requirements for License/Permit Amendments	GM 2
6.1.4.1	Notice of Hearing on License/Permit Amendments (Reserved)	GM 4
6.1.4.2	Intervention on License/Permit Amendments	GM 4
6.1.4.3	Summary Disposition Procedures on License/Permit Amendments	GM 4
6.1.4.4	Matters Considered in Hearings on License Amendments	GM 4
6.1.5	Primary Jurisdiction in Appeal Board to Consider License Amendment in Special Hearing	GM 5
6.1.6	Facility Changes Without License Amendments	GM 6
6.2	<u>Amendments to License/Permit Applications</u>	GM 6
6.3	<u>Antitrust Considerations</u>	GM 7
6.3.1	Consideration of Antitrust Matters After the Construction Permit Stage	GM 9
6.3.2	Intervention in Antitrust Proceedings	GM 12
6.3.3	Discovery in Antitrust Proceedings	GM 13
6.3.3.1	Discovery Cutoff Dates for Antitrust Proceedings	GM 14
6.4	<u>Attorney Conduct</u>	GM 14
6.4.1	Practice Before Licensing/Appeal Boards	GM 14
6.4.1.1	Professional Decorum Before Licensing/Appeal Boards	GM 15
6.4.2	Disciplinary Matters re Attorneys	GM 16
6.4.2.1	Jurisdiction of Special Board re Attorney Discipline	GM 17
6.4.2.2	Procedures in Special Disqualification Hearings re Attorney Conduct	GM 18
6.4.2.3	Conflict of Interest	GM 18
6.5	<u>Communications Between Staff/Applicant/Other Parties/Adjudicatory Bodies</u>	GM 19
6.5.1	Ex Parte Communications Rule	GM 19
6.5.2	Telephone Conference Calls	GM 20
6.5.3	Staff-Applicant Communications	GM 21
6.5.3.1	Staff Review of Application	GM 21
6.5.3.2	Staff-Applicant Correspondence	GM 22
6.5.4	Notice of Relevant Significant Developments	GM 22
6.5.4.1	Duty to Inform Adjudicatory Board of Significant Developments	GM 22
6.6	<u>Early Site Review Procedures</u>	GM 25
6.6.1	Scope of Early Site Review	GM 25
6.7	<u>Endangered Species Act</u>	GM 25
6.7.1	Required Findings re Endangered Species Act	GM 25
6.7.2	Degree of Proof Needed re Endangered Species Act	GM 26
6.8	<u>Financial Qualifications</u>	GM 26
6.9	<u>Generic Issues</u>	GM 28
6.9.1	Consideration of Generic Issues in Licensing Proceedings	GM 28
6.9.2	Effect of Unresolved Generic Issues	GM 30

6.9.2.1	Effect of Unresolved Generic Issues in Construction Permit Proceedings	GM 30
6.9.2.2	Effect of Unresolved Generic Issues in Operating License Proceedings	GM 30
6.10	<u>Inspection and Enforcement</u>	GM 31
6.10.1	Enforcement Actions	GM 32
6.10.1.1	Civil Penalties	GM 34
6.10.1.2	Show Cause Proceedings (SEE 1.4)	GM 35
6.11	<u>Masters in NRC Proceedings</u>	GM 35
6.12	<u>Material False Statements in Applications (SEE 1.5.2)</u>	GM 36
6.13	<u>Materials Licenses</u>	GM 36
6.14	<u>Motions in NRC Proceedings</u>	GM 38
6.14.1	Form of Motion	GM 39
6.14.2	Responses to Motions	GM 39
6.14.2.1	Time for Filing Responses to Motions	GM 39
6.14.3	Licensing Board Actions on Motions	GM 39
6.15	<u>NEPA Considerations</u>	GM 40
6.15.1	Environmental Impact Statements (EIS)	GM 42
6.15.1.1	Need to Prepare an EIS	GM 44
6.15.1.2	Scope of EIS	GM 46
6.15.2	Role of EIS	GM 48
6.15.3	Circumstances Requiring Redrafting of Final Environmental Statement (FES)	GM 49
6.15.3.1	Effect of Failure to Comment on Draft Environmental Statement (DES)	GM 51
6.15.3.2	Stays Pending Remand for Inadequate EIS	GM 52
6.15.4	Alternatives	GM 52
6.15.4.1	Obviously Superior Standard for Site Selection	GM 54
6.15.4.2	Standards for Conducting Cost-Benefit Analysis Related to Alternatives	GM 56
6.15.5	Need for Facility	GM 57
6.15.6	Cost-Benefit Analysis Under NEPA	GM 58
6.15.6.1	Consideration of Specific Costs Under NEPA	GM 60
6.15.6.1.1	Cost of Withdrawing Farmland from Production (SEE 3.7.3.5.1)	GM 61
6.15.6.1.2	Socioeconomic Costs as Affected by Increased Employment and Taxes from Proposed Facility	GM 61
6.15.7	Consideration of Class 9 Accidents in an Environmental Impact Statement	GM 61
6.15.8	Power of NRC Under NEPA	GM 62
6.15.8.1	Powers in General (Under NEPA)	GM 63
6.15.8.2	Transmission Line Routing	GM 65
6.15.8.3	Pre-LWA Activities/Offsite Activities	GM 65
6.15.8.4	Relationship to EPA with Regard to Cooling Systems	GM 66
6.15.8.5	NRC Power Under NEPA with Regard to FWPCA	GM 67
6.15.9	Spent Fuel Pool Proceedings	GM 67

6.16	<u>NRC Staff</u>	GM 68
6.16.1	<u>Staff Role in Licensing Proceedings</u>	GM 68
6.16.1.1	Staff Demands on Applicant or Licensee	GM 72
6.16.1.2	Staff Witnesses	GM 73
6.16.1.3	Post Hearing Resolution of Outstanding Matters by the Staff	GM 73
6.16.2	Status of Staff Regulatory Guides	GM 75
6.16.3	Status of Staff Position and Working Papers	GM 76
6.16.4	Status of Standard Review Plan	GM 77
6.16.5	Conduct of NRC Employees (Reserved)	GM 77
6.17	<u>Orders of Licensing and Appeal Boards</u>	GM 77
6.17.1	Compliance with Board Orders	GM 77
6.18	<u>Precedent and Adherence to Past Agency Practice</u>	GM 78
6.19	<u>Pre-Permit Activities</u>	GM 78
6.19.1	Pre-LWA Activity	GM 81
6.19.2	Limited Work Authorization	GM 82
6.19.2.1	LWA Status Pending Remand Proceedings	GM 83
6.20	<u>Regulations</u>	GM 84
6.20.1	Compliance with Regulations	GM 84
6.20.2	Commission Policy Statements	GM 84
6.20.3	Regulatory Guides	GM 84
6.20.4	Challenges to Regulations	GM 86
6.20.5	Agency's Interpretation of its Own Regulations	GM 88
6.21	<u>Rulemaking</u>	GM 88
6.21.1	Rulemaking Distinguished from General Policy Statements	GM 89
6.21.2	Generic Issues and Rulemaking	GM 89
6.22	<u>Research Reactors</u>	GM 90
6.23	<u>Disclosure of Information to the Public</u>	GM 90
6.23.1	Freedom of Information Act Disclosure	GM 91
6.23.2	Privacy Act Disclosure (Reserved)	GM 92
6.23.3	Disclosure of Proprietary Information	GM 92
6.23.3.1	Protecting Information Where Disclosure is Sought in an Adjudicatory Proceeding	GM 93
6.23.3.2	Security Plan Information Under 10 CFR § 2.790(d)	GM 95
6.24	<u>Show Cause Proceedings</u>	GM 96
6.24.1	Petition for Show Cause Order	GM 98
6.24.1.1	Grounds for Show Cause Order	GM 98
6.24.1.2	Burden of Proof for Show Cause Order	GM 99
6.24.1.3	Issues in Show Cause Proceedings	GM 99
6.24.2	Standards for Issuing Show Cause Order	GM 99
6.24.3	Review of Decision on Request for Show Cause Order	GM 100
6.24.4	Notice/Hearing on Show Cause to Licensee/Permittee	GM 101
6.24.5	Burden of Proof in Show Cause Proceedings	GM 102

6.24.6	Consolidation of Petitioners in Show Cause Proceedings	GM 102
6.24.7	Necessity of Hearing in Show Cause Proceedings	GM 103
6.24.8	Intervention in Show Cause Proceedings	GM 103
6.25	<u>Summary Disposition Procedures (SEE 3.5)</u>	GM 103
6.26	<u>Suspension, Revocation or Modification of License</u>	GM 103
6.27	<u>Technical Specifications</u>	GM 104
6.28	<u>Termination of Facility Licenses</u>	GM 105
6.29	<u>Procedures in Other Types of Hearings</u>	GM 105
6.29.1	Military or Foreign Affairs Functions	GM 105
6.29.2	Export Licensing (SEE ALSO 3.4.6)	GM 105
6.29.2.1	Jurisdiction of Commission re Export Licensing	GM 105
6.29.2.2	Export License Criteria	GM 106

TABLE OF CONTENTS
APPLICATION FOR LICENSE/PERMIT

1.0	APPLICATION FOR LICENSE/PERMIT	An 1
1.1	<u>Applicants</u>	An 1
1.2	<u>Renewal Applications</u>	An 1
1.3	<u>Applications for Early Site Review</u>	An 1
1.4	<u>Form of Application for Construction Permit/Operating License</u>	An 2
1.4.1	Form of Application for Initial License/Permit	An 2
1.4.2	Form of Renewal Application for License/Permit	An 2
1.5	<u>Contents of Application</u>	An 2
1.5.1	Incomplete Applications	An 2
1.5.2	Material False Statements in Applications	An 2
1.6	<u>Docketing of License/Permit Application</u>	An 5
1.7	<u>Notice of License/Permit Application</u>	An 5
1.7.1	Publication of Notice in Federal Register	An 5
1.7.2	Amended Notice After Addition of New Owners	An 6
1.7.3	Notice on License Renewal	An 6
1.8	<u>Staff Review of License/Permit Application</u>	An 6
1.9	<u>Withdrawal of Application for License/Permit</u>	An 8
1.10	<u>Abandonment of Application for License/Permit</u>	An 13

PROCEDURAL CONSIDERATIONS

1.0 APPLICATION FOR LICENSE/PERMIT

1.1 Applicants

All co-owners of a nuclear power plant must be co-applicants for NRC licenses for the facility. To hold otherwise could place a cloud on significant areas of the NRC's regulatory authority and is not consistent with the safety considerations with which Congress was primarily concerned in the Atomic Energy Act. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 200-201 (1978). The Appeal Board's decision in Marble Hill thus overrules the Licensing Board's holding to the contrary in Omaha Public Power District (Fort Calhoun Station, Unit 2), LBP-77-5, 5 NRC 437 (1977).

1.2 Renewal Applications

Applications for a renewal of a license may be filed with the NRC. 10 CFR § 2.109 provides that where an application for renewal is filed at least 30 days prior to the expiration of an existing license authorizing activities of a continuing nature, the existing license will not be deemed to expire until the renewal application has been finally determined.

1.3 Applications for Early Site Review

The Commission's regulations in 10 CFR Part 2 have been amended to provide for an adjudicatory early site review. See 10 CFR §§ 2.101(a-1), 2.600 to 2.606. These early site review procedures, which differ in both form and effect from those of Appendix Q to 10 CFR Part 50, are designed to result in the issuance of a partial initial decision with regard to site suitability matters chosen by the applicant.

An applicant who seeks early site review is not required to own the proposed power plant site. The real test for deciding on early site review is whether or not the applicant can produce the information required by regulation and necessary for an effective hearing. Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1136 (1981).

The Commission's early site review regulations do not require that the applicant have a "firm plan" to construct a plant at the site, but rather are meant to provide an opportunity to resolve siting issues in advance of any substantial commitment of resources. 10 CFR § 2.101(a-1), §§ 2.600 et seq. Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 975-976 (1981).

Three years after the Licensing Board sanctioned a limited work authorization (LWA) and before applicant had proceeded with any construction activity, applicant indicated it wanted to amend its construction permit application to focus only on site suitability issues. The Appeal Board adopted applicant's suggestion to "vacate without prejudice" the decisions of the Licensing Board sanctioning the LWA. The Appeal Board remanded the cause for proceedings deemed appropriate by the Licensing Board upon formal receipt of an early site approval application. Delmarva Power & Light Company (Summit Power Station, Units 1 and 2), ALAB-516, 9 NRC 5, 6 (1979).

1.4 Form of Application for Construction Permit/Operating License

1.4.1 Form of Application for Initial License/Permit

Regulations permit the filing of an application in three parts: Antitrust Information; SAR; and ER (10 CFR § 2.101). The application is initially treated as a "tendered application" pending a preliminary Staff review for completeness. 10 CFR § 2.101(a)(2).

1.4.2 Form of Renewal Application for License/Permit

(RESERVED)

1.5 Contents of Application

1.5.1 Incomplete Applications

The determination as to whether an application is sufficiently complete for docketing is for the Staff, rather than an adjudicatory board, to make. New England Power Co., et al. (NEP, Units 1 & 2), LBP-78-9, 7 NRC 271, 280 (1978).

1.5.2 Material False Statements in Applications

Under Section 186 of the Atomic Energy Act of 1954 (42 U.S.C. § 2236), a license or permit may be revoked for material false statements in the application.

Liability of an applicant or licensee for a material false statement in violation of Section 186a of the Atomic Energy Act does not depend on whether the applicant or licensee knew of the falsity. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 910 (1982), citing, Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480 (1976), aff'd sub nom. Virginia Electric and Power Co. v. Nuclear Regulatory Commission, 571 F.2d 1289 (4th Cir. 1978).

Intent to deceive is irrelevant in determining whether there has been a material false statement under Section 186a of the Atomic Energy Act; a deliberate effort to mislead the NRC, however, is relevant to the matter of sanctions, once a material false statement has been found. Midland Plant, supra, 16 NRC at 915; The Regents of the University of California (UCLA Research Reactor), LBP-84-22, 19 NRC 1383, 1387 (1984).

In Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-324, 3 NRC 347 (1976), the Appeal Board held that:

- (1) A statement may be "false" within the meaning of Section 186 even if it is made without knowledge of its falsity - i.e., scienter is not a necessary element of a false statement under Section 186.
- (2) Information is material under Section 186 if it would have a natural tendency or capability to influence the decision of the person or body to whom it is to be submitted - i.e., the information is material if a reasonable Staff member would consider it in reaching a conclusion. The information need not be relied upon in fact.

Under Section 186a of the Atomic Energy Act, the test for materiality is whether the information is capable of influencing the decisionmaker, not whether the decisionmaker would, in fact, have relied on it. Determinations of materiality require careful, common sense judgments of the context in which information appears and the stage of the licensing process involved. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 910 (1982), citing, Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480 (1976), aff'd sub nom. Virginia Electric and Power Co. v. Nuclear Regulatory Commission, 571 F.2d 1289 (4th Cir. 1978); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-774, 19 NRC 1350, 1358 (1984); The Regents of the University of California (UCLA Research Reactor), LBP-84-22, 19 NRC 1383, 1408-09 (1984).

The mere existence of a question or discussion about the possible materiality of information does not necessarily make the information material. Midland Plant, supra, 16 NRC at 914.

In Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), CLI-76-22, 4 NRC 480 (1976), the Commission affirmed the Appeal Board's rulings supra and, in addition, held that silence (omissions) as to material facts regarding issues of major importance to licensing

decisions is included in the Section 186 phrase "material false statement" since such an interpretation will effectuate the health and safety purposes of the Act. Thus, the sanctions of Section 186 apply not only to affirmative statements but to omissions of material facts important to health and safety.

A "material false statement" under Section 186a of the Atomic Energy Act encompasses omissions as well as affirmative statements. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 911 (1982), citing, Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480, 489 (1976), aff'd sub nom. Virginia Electric and Power Co. v. Nuclear Regulatory Commission, 571 F.2d 1289 (4th Cir. 1978); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-774, 19 NRC 1350, 1357 (1984). The Commission has indicated, however, that it is reconsidering its views on what constitutes a material false statement in this regard. See 49 Fed. Reg. 8583, 8584 (1984).

Information concerning a licensee's or applicant's intent to deceive may call into question its "character," a matter the Commission is authorized to consider under Section 182 of the Atomic Energy Act, 42 U.S.C. 2232a, or its ability and willingness to comply with Agency regulations, as Section 103b, 42 U.S.C. 2133b, requires. Midland Plant, supra, 16 NRC at 915 n.25.

False statements, if proved, could signify lack of management character sufficient to preclude an award of an operating license, at least as long as responsible individuals retained any responsibilities for the project. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-84-20, 19 NRC 1285, 1297 (1984), citing, Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-84-13, 19 NRC 659, 674-75 (1984), and Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-83-2, 17 NRC 69, 70 (1983).

A deliberate false statement or withholding of material information would warrant the imposition of a severe sanction. Not only are material false statements and omissions punishable under Sections 234 and 186 of the Atomic Energy Act, but deliberate planning for such statements or concerns on the part of applicants or licensees would be evidence of bad character that could warrant adverse licensing action even where those plans are not carried to fruition. When parties and their attorneys engage in conduct which skirts close to the line of improper conduct, they are running a grave risk of serious sanction if they cross that line. Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-83-2, 17 NRC 69, 70 (1983).

1.6 Docketing of License/Permit Application

If the application is found to be complete, a docket number will be assigned and the applicant and other appropriate officials notified. 10 CFR § 2.101(a)(3).

1.7 Notice of License/Permit Application

1.7.1 Publication of Notice in Federal Register

The Federal Register Act (44 U.S.C. § 1508) provides that a publication of a notice in the Federal Register constitutes notice to all persons residing in the United States. Consolidated Edison Co. (Indian Point Station, Unit No. 2), LBP-82-1, 15 NRC 37, 40 (1982).

In Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 & 2), ALAB-445, 6 NRC 865 (1977), it was held that, while 10 CFR § 2.104(a) requires that notice of hearing initiating a construction permit proceeding be published in the Federal Register at least 30 days prior to commencement of hearing, it does not require that such notice establish the time, place and date for all phases of the evidentiary hearings. However, in an unpublished opinion issued on December 12, 1977, the Federal District Court for the Northern District of Mississippi held that the interpretation of the notice requirements by the Appeal Board in Yellow Creek was erroneous and that at least 30 days prior public notice of the time, place and date of hearing must be provided.

One may be charged with notice of matters published in the Federal Register. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7 (1980). (Note - The Appeal Board expressly declined to reach the question of whether the Federal Register notice bound the petitioners to its terms. Id. at 10).

There appears to be no requirement that the rights of interested local governmental bodies to be made parties to a proceeding be spelled out in the notice of opportunity for hearing. Thus, a notice of opportunity for hearing is not defective simply because it fails to state the right of an interested governmental body to participate in a proceeding. Detroit Edison Company, (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 585 (1978).

The notice to parties wishing to intervene in hearings before the Commission published in the Federal Register is notice to all the world. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1085 (1982).

1.7.2 Amended Notice After Addition of New Owners

(RESERVED)

1.7.3 Notice on License Renewal

(RESERVED)

1.8 Staff Review of License/Permit Application

An ASLB has ruled that the Staff has a right to continue to meet privately with parties even though a hearing has been noticed, and that, while an ASLB has supervisory authority over Staff actions that are part of the hearing process, it has no such authority with regard to the Staff's review process. Northeast Nuclear Energy Co. (Montague Nuclear Power Station, Units 1 & 2), LBP-75-19, 1 NRC 436 (1975).

Note that 10 CFR § 2.102 explicitly provides that the Staff may request any one party to a proceeding to confer informally with the Staff during the Staff's review of an application.

In the absence of a demonstration that meetings were deliberately being scheduled with a view to limiting the ability of intervenors' representatives to attend, the imposition of hard and fast rules would needlessly impair the Staff's ability to obtain information. The Staff should regard the intervenor's opportunity to attend as one of the factors to be taken into account in making its decisions on the location of such meetings. Fairness demands that all parties be informed of the scheduling of such meetings at the same time. Consolidated Edison Co. of N.Y. (Indian Point, Unit 2) and Power Authority of the State of N.Y. (Indian Point Unit 3), CLI-82-41, 16 NRC 1721, 1722-23 (1982).

Adjudicatory boards lack the power to direct the Staff in the performance of its independent responsibilities and, under the Commission's regulatory scheme, boards cannot direct the Staff to suspend review of an application, preparation of an environmental impact statement or work, studies or analyses being conducted or planned as part of the Staff's evaluation of an application. New England Power Co. (NEP, Units 1 & 2), LBP-78-9, 7 NRC 271, 278-79 (1978).

The Staff produces, among other documents, the Safety Evaluation Report (SER) and the Draft and Final Environmental Statements (DES and FES). The studies and analyses which result in these reports are made independently by the Staff, and Licensing Boards have no rule or authority in their preparation. The Board does not have any supervisory authority over that part of the application review process that has been entrusted to the Staff. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 and 3), LBP-83-36, 18 NRC 45, 48-49 (1983), citing, New

England Power Co. (NEP Units 1 and 2), LBP-78-9, 7 NRC 271 (1978).
See Offshore Power Systems (Floating Nuclear Power Plants),
 ALAB-489, 8 NRC 194, 206-07 (1978).

It is up to the Staff to decide its priorities in the review of applications. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-581, 11 NRC 233, 238 (1980), modified, CLI-80-12, 11 NRC 514, 517 (1980). However, where a Licensing Board finds that the Staff cannot demonstrate a reasonable cause for its delay in submitting environmental statements, the Board may issue a ruling noting the unjustified failure to meet a publication schedule and then proceed to hear other matters or suspend proceedings until the Staff files the necessary documents. The Board, sua sponte or on motion of one of the parties, may refer the ruling to the Appeal Board. If the Appeal Board affirms, it would certify the matter to the Commission. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 207 (1978).

One aspect of the NRC role in regulating nuclear power plants is to provide criteria forming the engineering baseline against which licensee system designs, including component specifications, are judged for adequacy. It has not been the Staff's practice to certify that any particular components are qualified for nuclear service, but, rather, it independently reviews designs and analyses, qualification documentation and quality assurance programs of licensees to determine adequacy. This review approach is consistent with the NRC's responsibilities under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.). Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 426 (1978).

Pursuant to 10 CFR § 50.47(a)(1), the NRC must find, prior to the issuance of a license for the full-power operation of a nuclear power reactor, that the state of onsite and offsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Cincinnati Gas and Electric Co. (Wm. H. Zimmer Nuclear Power Station, Unit 1), LBP-82-68, 16 NRC 741, 745 (1982); Consolidated Edison Co. of New York (Indian Point, Unit 2) and Power Authority of the State of New York (Indian Point, Unit 3), CLI-83-16, 17 NRC 1006, 1008 (1983); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-730, 17 NRC 1057, 1063-64 (1983); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1094 n.22 (1983); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-737, 18 NRC 168, 172 (1983); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-12, 21 NRC 644, 651 (1985). In accordance with Section 50.47(a)(2), the Commission is to base its finding on a review of FEMA's "findings and determinations as to whether State and local emergency plans are adequate and

capable of being implemented", and on a review of the NRC Staff assessment of applicant's onsite emergency plans. Zimmer, supra, 16 NRC at 745-46; Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1094 n.22 (1983); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-730, 17 NRC 1057, 1063-64 (1983); Union Electric Co. (Callaway Plant, Unit 1), ALAB-754, 18 NRC 1333, 1334-1335 (1983), affirming, LBP-83-71, 18 NRC 1105 (1983); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-12, 21 NRC 644, 652 (1985). In any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on a question of the adequacy of an emergency plan. Zimmer, supra, 16 NRC at 746. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 378 (1983), citing, 10 CFR § 50.47(a)(2); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-12, 21 NRC 644, 655 (1985).

A Staff review of an application is an aid to the Commission in determining if a hearing is needed in the public interest. Without the Staff's expert judgment the Commission probably cannot reach an informed judgment on the need for a hearing in the public interest. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-581, 11 NRC 233, 235 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

In an operating license proceeding (with the exception of certain NEPA issues), the applicant's license application is in issue, not the adequacy of the Staff's review of the application. An intervenor is thus free to challenge directly an unresolved generic safety issue by filing a proper contention, but it may not proceed on the basis of allegations that the Staff has somehow failed in its performance. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807 (1983), review denied, CLI-83-32, 18 NRC 1309 (1983).

1.9 Withdrawal of Application for License/Permit

An applicant may withdraw its application without prejudice unless there is legal harm to the intervenors or the public. Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), LBP-82-81, 16 NRC 1128, 1134 (1982), citing, LeCompte v. Mr. Chip, Inc., 528 F.2d 601, 604 (5th Cir. 1976).

The filing of an application to construct a nuclear power plant is wholly voluntary. The decision to withdraw an application is a business judgment. The law on withdrawal does not require a determination of whether the decision is sound. Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit 1), LBP-83-2, 17 NRC 45, 51 (1983).

The right to a voluntary dismissal without prejudice is not absolute. Perkins, supra, 16 NRC at 1135, citing, LeCompte, supra, 528 F.2d, at 604.

Where the defendant has prevailed or is about to prevail, an unconditional withdrawal cannot be approved. Duke Power Co., supra, 16 NRC at 1135, citing, 9 Wright and Miller Federal Practice and Procedure, Civil, Section 2364 (1971).

10 CFR § 2.107(a) provides, in part, that:

(t)he Commission...may, on receiving a request for withdrawal of an application, deny the application or dismiss it with prejudice. Withdrawal of an application after the issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe.

The terms prescribed at the time of withdrawal must bear a rational relationship to the conduct and legal harm at which they are aimed. The record must support any findings concerning the conduct and harm in question. Perkins, supra, 16 NRC at 1134, citing, LeCompte v. Mr. Chip, Inc., 528 F.2d 601, 604 (5th Cir. 1976); 5 Moore's Federal Practice 41.05(1) at 41-58.

The Board may attach reasonable conditions on a withdrawal without prejudice to protect intervenors and the public from legal harm. Perkins, supra, 16 NRC at 1134, citing, LeCompte v. Mr. Chip, Inc., supra, 528 F.2d at 604.

Intervenors have standing to seek a dismissal with prejudice or to seek conditions on a dismissal without prejudice to the exact extent that they may be exposed to legal harm by a dismissal. Perkins, supra, 16 NRC at 1137.

The possibility of another hearing, standing alone, does not justify either a dismissal with prejudice or conditions on a withdrawal without prejudice. That kind of harm, the possibility of future litigation with its expenses and uncertainties, is the consequence of any dismissal without prejudice. It does not provide a basis for departing from the usual rule that a dismissal should be without prejudice. Duke Power Co. (Perkins Nuclear Station, Units 1, 2, and 3), LBP-82-81, 16 NRC 1128, 1135 (1982), citing, Jones v. SEC, 298 U.S. 1, 19 (1936); 5 Moore's Federal Practice 41.05(1) at 41-72 to 41-73 (2nd ed. 1981). Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit 1), LBP-83-2, 17 NRC 45, 50 (1983).

In the circumstances of a mandatory licensing proceeding, the fact that the motion for withdrawal comes after most of the hearings should not operate to bar a withdrawal without prejudice where the applicant has prevailed or where there has been a nonsuit as to particular issues. Perkins, supra, 16 NRC at 1136.

While Section 2.107 is phrased primarily in terms of requests for withdrawal of an application by an applicant, the Commission itself has entertained such requests made by other parties to a construction permit proceeding, Consumers Power Company (Quanicassee Plant, Units 1 & 2), CLI-74-29, 8 AEC 10 (1974), and has indicated that such a request is normally to be directed to, and ruled upon by, the Atomic Safety and Licensing Board presiding in the proceeding. Consumers Power Company (Quanicassee Plant, Units 1 & 2), CLI-74-37, 8 AEC 627, n.1 (1974). Thus, it appears that a Licensing Board has the authority, under 10 CFR § 2.107, to consider a motion to compel withdrawal of an application filed by a party other than the applicant.

With regard to design changes affecting an application, where there is a fairly substantial change in design not reflected in the application, the remedy is not summary judgment against the applicant, nor is withdrawal and subsequent refiling of the application necessarily required. Rather, an amendment of the application is appropriate. Public Service Co. of N.H. (Seabrook Station, Units 1 & 2), LBP-74-36, 7 AEC 877 (1974).

Following a request to withdraw an application the Board may dismiss the case "without prejudice," signifying that no disposition on the merits was made; or "with prejudice," suggesting otherwise. (10 CFR § 2.107(a), 10 CFR § 2.721(d)). A dismissal with prejudice requires some showing of harm to either a party or the public interest in general and requires careful consideration of the circumstances, giving due regard to the legitimate interests of all parties. It is well settled that the prospect of a second lawsuit or another application does not provide the requisite quantum of legal harm to warrant dismissal with prejudice. Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1132, 1135 (1981); Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 973, 978-979 (1981). Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), LBP-82-81, 16 NRC 1128, 1134 (1982), citing, Fed.R. Civ.P. 41(a)(1), (2); LeCompte v. Mr. Chip Inc., 528 F.2d 601, 603 (5th Cir. 1976), citing, 5 Moore's Federal Practice, 41.05 (2d ed. 1981).

The Commission has the authority to condition the withdrawal of a license application on such terms as it thinks just (10 CFR § 2.107(a)). However, dismissal with prejudice is a severe sanction which should be reserved for those unusual situations which involve substantial prejudice to the opposing party or to the public interest in general. Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1132-1133 (1981); Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit 1), LBP-84-33, 20 NRC 765, 767-768 (1984).

General allegations of harm to property values, unsupported by affidavits or unrebutted pleadings, do not provide a basis for dismissal of an application with prejudice. Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2), LBP-84-43, 20 NRC 1333, 1337 (1984), citing, Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1133-34 (1981), Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 979 (1981).

Allegations of psychological harm from the pendency of the application, even if supported by the facts, do not warrant the dismissal of an application with prejudice. Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2), LBP-84-43, 20 NRC 1333, 1337-1338 (1984), citing, Metropolitan Edison Co. v. People Against Nuclear Energy, 103 S.Ct. 1556 (1983).

A Licensing Board has substantial leeway in defining the circumstances in which an application may be withdrawn (10 CFR § 2.107(a)), but the Board may not abuse this discretion by acting in an arbitrary fashion. The withdrawal terms set by the Board must bear a rational relationship to the conduct and legal harm at which they are aimed. Fulton, supra, 14 NRC at 974. Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit 1), LBP-83-2, 17 NRC 45, 49 (1983).

A Board may authorize the revocation of a Limited Work Authorization and the withdrawal of an application without prejudice after determining the adequacy of the applicant's site redress plan and clarifying the responsibilities of the applicant and staff in the event that an alternate use for the site is found before redress is completed. United States Dept. of Energy, Project Management Corp., Tennessee Valley Authority (Clinch River Breeder Reactor Plant), LBP-85-7, 21 NRC 507 (1985).

Where a motion for leave to withdraw a license application without prejudice has been filed with both an Appeal Board and a Licensing Board, it is for the Licensing Board, if portions of the proceeding remain before it, to pass upon the motion in the first instance. As to whether withdrawal should be granted without prejudice, the Board is to apply the guidance provided in Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967 (1981) and Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125 (1981). Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-668, 15 NRC 450, 451 (1982).

The applicant for a license bears the cost of Staff work performed for its benefit, whether or not it withdraws its application prior to fruition. Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125,

1137 (1981). However, an applicant which withdrew its application prior to the November 6, 1981 issuance of revised regulations may not be billed for the costs incurred by the Staff in reviewing the application. Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2), LBP-84-43, 20 NRC 1333, 1338 (1984), citing, New England Power Co. v. NRC, 683 F.2d 12 (1st Cir. 1982).

Ordinarily parties are to bear their own litigation expense. Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), LBP-82-81, 16 NRC 1128, 1139 (1982), citing, Alyeska Pipeline Serv. v. Wilderness Soc., 421 U.S. 240; 44 L.Ed.2d 141; 95 S.Ct. 1612 (1975).

A claim for litigation costs under the "private attorney general" theory must have a statutory basis. Perkins, supra, 16 NRC at 1139, citing, Alyeska Pipeline, supra, 421 U.S. at 269.

Recovery of litigation costs by the prevailing party as an award for winning a presumably completed law suit, must be distinguished from the practice of reimbursing litigation costs as a condition on a dismissal without prejudice. The latter is not an award for winning anything, but it is intended as compensation to defendants who have been put to the trouble and expense to prepare a defense only to have the plaintiff change his mind, withdraw the complaint, but remain free to bring the action again. Perkins, supra, 16 NRC at 1140.

The absence of specific authority does not prevent the Commission's Boards from exercising reasonable authority necessary to carry out their responsibilities, and a money condition is not necessarily barred from consideration. Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), LBP-82-81, 16 NRC 1128, 1140 (1982). Payment of attorney's fees is not necessarily prohibited, as a matter of law, as a condition of withdrawal without prejudice of a construction permit application. Perkins, supra, 16 NRC at 1141. Another Licensing Board has noted, however, that the Commission is a body of limited powers. Its enabling legislation has no provisions empowering it to require the payment of a party's costs and expenses, nor do the regulations promulgated by the Commission provide for such payments. It has no equitable power it can exercise, as courts have. Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit 1), LBP-83-2, 17 NRC 45, 54 (1983).

If intervenors prevail on a need-for-power issue, there is no entitlement to attorney's fees because as the prevailing party, they received what they paid for and are barred from recovery. On the other hand, if intervenors lose on the need-for-power issue, they may not recover their attorney's fees because they will suffer no legal harm in any filing of a new application. Perkins, supra, 16 NRC at 1142.

Where an applicant abandons its construction of a nuclear facility and requests that the construction permit proceeding be terminated prior to resolution of issues raised on appeal from the initial decision authorizing construction, fundamental fairness dictates that termination of the proceedings be accompanied by a vacation of the initial decision on the ground of mootness. Rochester Gas and Electric Corporation (Sterling Power Project, Nuclear Unit 1), ALAB-596, 11 NRC 867, 869 (1980); United States Department of Energy (Clinch River Breeder Reactor Plant), ALAB-755, 18 NRC 1337, 1338-1339 (1983), vacating, LBP-83-8, 17 NRC 158 (1983).

The antitrust information required to be filed under 10 CFR § 50.33a is part of the permit application; therefore, any applicant who wishes to withdraw after filing antitrust information, must comply with the Commission's rule governing withdrawal of license applications (10 CFR § 2.107(a)), even if a hearing on the application had not yet been scheduled. To instead file a Notice of Prematurity and / or Notice of Withdrawal is an impermissible unilateral withdrawal, and the filing will be treated as a formal request for withdrawal under 10 CFR § 2.107(a). Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit 1, CLI-82-5, 15 NRC 404, at 405 (1982).

1.10 Abandonment of Application for License/Permit

When the applicant has abandoned any intention to build a facility, it is within the Licensing Board's power to dismiss the construction permit application. Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), ALAB-605, 12 NRC 153, 154 (1980).

TABLE OF CONTENTS

PREHEARING MATTERS

2.0	PREHEARING MATTERS (SEE 3.3)	Pre 1
2.1	<u>Scheduling of Hearings</u> (SEE 3.3.1 to 3.3.5.2)	Pre 1
2.2	<u>Necessity of Hearing</u>	Pre 1
2.3	<u>Location of Hearing</u>	Pre 2
2.3.1	Public Interest Requirements Affecting Hearing Location (Reserved)	Pre 2
2.3.2	Convenience of Litigants Affecting Hearing Location (SEE 3.3.5.2)	Pre 3
2.4	<u>Issues for Hearing</u> (SEE 3.4 to 3.4.6)	Pre 3
2.5	<u>Notice of Hearing</u>	Pre 3
2.5.1	Contents of Notice of Hearing	Pre 3
2.5.2	Adequacy of Notice of Hearing	Pre 4
2.5.3	Publication of Notice of Hearing in <u>Federal Register</u>	Pre 4
2.5.4	Requirement to Renote	Pre 5
2.6	<u>Prehearing Conferences</u>	Pre 5
2.6.1	Transcripts of Prehearing Conferences	Pre 6
2.6.2	Special Prehearing Conferences	Pre 6
2.6.3	Prehearing Conference Order	Pre 6
2.6.3.1	Effect of Prehearing Conference Order	Pre 7
2.6.3.2	Objections to Prehearing Conference Order	Pre 7
2.6.3.3	Appeal from Prehearing Conference Order	Pre 7
2.7	<u>Conference Calls</u>	Pre 7
2.8	<u>Prehearing Motions</u>	Pre 8
2.8.1	Prehearing Motions Challenging ASLB Composition	Pre 8
2.8.1.1	Contents of Motion Challenging ASLB Composition	Pre 8
2.8.1.2	Evidence of Bias in Challenges to ASLB Composition	Pre 9
2.8.1.3	Waiver of Challenges to ASLB Composition	Pre 9
2.9	<u>Intervention</u>	Pre 10
2.9.1	General Policy on Intervention	Pre 10
2.9.2	Intervenor's Need for Counsel	Pre 10
2.9.3	Petitions to Intervene	Pre 11
2.9.3.1	Pleading Requirements	Pre 15
2.9.3.2	Defects in Pleadings	Pre 19
2.9.3.3	Time Limits/Late Petitions	Pre 19
2.9.3.3.1	Time for Filing Intervention Petitions	Pre 20
2.9.3.3.2	Sufficiency of Notice of Time Limits on intervention	Pre 20
2.9.3.3.3	Consideration of Untimely Petitions to Intervene	Pre 21
2.9.3.3.4	Appeals from Rulings on Late Intervention	Pre 34

TABLE OF CONTENTS

PREHEARING MATTERS

2.9.3.3.5	Mootness of Petitions to Intervene	Pre 35
2.9.3.4	Amendment of Petition Expanding Scope of Intervention	Pre 36
2.9.3.5	Withdrawal of Petition to Intervene	Pre 36
2.9.3.6	Intervention in Antitrust Proceedings	Pre 37
2.9.4	Interest and Standing for Intervention	Pre 39
2.9.4.1	Judicial Standing to Intervene	Pre 40
2.9.4.1.1	"Injury-in-Fact" and "Zone of Interest" Tests for Standing to Intervene	Pre 41
2.9.4.1.2	Standing of Organizations to Intervene	Pre 48
2.9.4.1.3	Standing to Intervene in Export Licensing Cases	Pre 52
2.9.4.1.4	Standing to Intervene in Specific Factual Situations	Pre 53
2.9.4.2	Discretionary Intervention	Pre 56
2.9.5	Contentions of Intervenor	Pre 58
2.9.5.1	Pleading Requirements for Contentions	Pre 62
2.9.5.2	Requirement of Oath from Intervenor	Pre 67
2.9.5.3	Requirement of Contentions for Purposes of Admitting Petitioner as a Party	Pre 67
2.9.5.4	Material Used in Support of Contentions	Pre 69
2.9.5.5	Timeliness of Submission of Contentions	Pre 70
2.9.5.6	Contentions Challenging Regulations	Pre 78
2.9.5.7	Contentions Involving Generic Issues	Pre 79
2.9.5.8	Contentions Challenging Absent or Incomplete Documents	Pre 82
2.9.5.9	Contentions re Adequacy of Security Plan	Pre 83
2.9.5.10	Defective Contentions	Pre 83
2.9.5.11	Discovery to Frame Contentions	Pre 83
2.9.5.12	Stipulations on Contentions (Reserved)	Pre 83
2.9.5.13	Appeals of Rulings on Contentions	Pre 83
2.9.6	Conditions on Grants of Intervention	Pre 84
2.9.7	Appeals of Rulings on Intervention	Pre 84
2.9.7.1	Standards for Reversal of Rulings on Intervention	Pre 86
2.9.8	Reinstatement of Intervenor After Withdrawal	Pre 87
2.9.9	Rights of Intervenor at Hearing	Pre 87
2.9.9.1	Burden of Proof	Pre 88
2.9.9.2	Presentation of Evidence	Pre 89
2.9.9.2.1	Affirmative Presentation by Intervenor/Participants	Pre 89
2.9.9.2.2	Consolidation of Intervenor Presentations	Pre 89
2.9.9.3	Cross-Examination by Intervenor	Pre 90
2.9.9.4	Intervenor's Right to File Proposed Findings	Pre 90
2.9.9.5	Attendance at/Participation in Prehearing Conferences/Hearings	Pre 91
2.9.9.6	Pleadings and Documents of Intervenor	Pre 92
2.9.10	Cost of Intervention	Pre 92
2.9.10.1	Financial Assistance to Intervenor	Pre 92
2.9.10.2	Intervenor's Witnesses	Pre 94

TABLE OF CONTENTS

PREHEARING MATTERS

2.9.11	Appeals by Intervenor	Pre 95
2.9.12	Intervention in Remanded Proceedings	Pre 95
2.10	<u>Nonparty Participation - Limited Appearance and Interested States</u>	Pre 95
2.10.1	Limited Appearances in NRC Adjudicatory Proceedings	Pre 95
2.10.1.1	Requirements for Limited Appearance	Pre 95
2.10.1.2	Scope/Limitations of Limited Appearances	Pre 95
2.10.2	Participation by Nonparty Interested States	Pre 96
2.11	<u>Discovery</u>	Pre 100
2.11.1	Time for Discovery	Pre 100
2.11.2	Discovery Rules	Pre 102
2.11.2.1	Construction of Discovery Rules	Pre 105
2.11.2.2	Scope of Discovery	Pre 105
2.11.2.3	Requests for Discovery During Hearing	Pre 107
2.11.2.4	Privileged Matter	Pre 107
2.11.2.5	Protective Orders	Pre 116
2.11.2.6	Work Product	Pre 118
2.11.2.7	Updating Discovery Responses	Pre 118
2.11.2.8	Interrogatories	Pre 118
2.11.3	Discovery Against the Staff	Pre 120
2.11.4	Responses to Discovery Requests	Pre 121
2.11.5	Compelling Discovery	Pre 122
2.11.5.1	Compelling Discovery From ACRS and ACRS Consultants	Pre 125
2.11.5.2	Sanctions for Failure to Comply with Discovery Orders	Pre 125
2.11.6	Appeals of Discovery Rulings	Pre 127

2.0 PREHEARING MATTERS

(SEE 3.3)

2.1 Scheduling of Hearings

(SEE 3.3.1 to 3.3.5.2)

2.2 Necessity of Hearing

The Commission's summary disposition rule (10 CFR 2.749) gives a party a right to an evidentiary hearing only where there is a genuine issue of material fact. An important effect of this principle is that applicants for licenses may be subject to substantial expense and delay when genuine issues have been raised, but are entitled to an expeditious determination, without need for an evidentiary hearing on all issues which are not genuine. Consumers Power Co. (Big Rock Point Plant), LBP-82-8, 15 NRC 299, 301 (1982).

10 CFR 2.105(a)(4), in effect in 1982, required that the Commission issue a notice of proposed action - also called a notice of opportunity for hearing - only with respect to an application for a facility license, an application for a license to receive radioactive waste for commercial disposal, an application to amend such licenses where significant hazards considerations are involved, or an application for "any other license or amendment as to which the Commission determines that an opportunity for public hearing should be afforded." A materials license amendment does not fall into these categories. Furthermore, even in cases where Section 189a of the Atomic Energy Act requires a trial-type hearing, a person requesting a hearing must make some threshold showing that a hearing would be necessary to resolve opposing and supported factual assertions. Kerr-McGee Corporation (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232, 245, 256 (1982), aff'd sub nom. City of West Chicago v. NRC, 701 F.2d 632 (7th Cir. 1983).

Congress has, by statute, established the authority of the Commission to provide for hearings upon the request of any person whose interest may be affected by the licensing proceeding and to establish Licensing Boards to conduct such hearings. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-82-87, 16 NRC 1195, 1201 (1982). However, it is now clear that a formal "on the record" adjudicatory type hearing under Section 554 of the Administrative Procedure Act (APA), 5 U.S.C. § 554, like those conducted by Licensing Boards, is not required for so-called materials licenses. Philadelphia Electric Company. (Limerick Generating Station, Units 1 and 2), ALAB-765, 19 NRC 645, 651 (1984); see West Chicago Rare Earths, supra, CLI-82-2, 15 NRC at 244-62, aff'd sub nom. City of West Chicago v. NRC, 701 F.2d 632 (7th Cir. 1983).

Once a notice of opportunity for hearing has been published and a request for a hearing has been submitted, the decision as to whether a hearing is to be held no longer rests with the Staff but instead is transferred to the Commission or an adjudicatory tribunal designated to preside in the proceeding. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-80-26, 12 NRC 367, 371 (1980).

Where complainants were denied a hearing after they had alleged a failure of the Director to take stronger action, the Appeal Board, in upholding the denial, noted that the Director's decision in no way restricted the authority of the ASLB to further restrict or even deny the license for operation of the facility. Further, it was not grounds for a hearing that, if a hearing was not immediately held on the Director's decision, the money spent on the plant would later influence the Licensing Board's decision. Houston Lighting and Power Company (South Texas Project, Units 1 & 2), CLI-80-32, 12 NRC 281, 288-290 (1980); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1264 (1984).

There is no statutory entitlement to a formal hearing under the Atomic Energy Act or NRC regulations with regard to materials licensing actions. Kerr-McGee Corp. (West Chicago Rare Earths Facility), CLI-82-21, 16 NRC 401, 402 (1982); Rockwell International (Energy Systems Group Special Nuclear Materials License No. SNM-21), CLI-83-15, 17 NRC 1001, 1002 (1983). Rather, for a hearing to be convened, prospective intervenors must fulfill the requirements for intervention. The presiding officer's review of the postcards and letters from individuals living near the Rockwell International nuclear facilities found only vague and generalized allusions to danger or injury from radiation. Therefore, standing was not established and there was no authority to hold a hearing. Rockwell International Corp. (Energy Systems Group Special Nuclear Materials License No. SNM-21), LBP-83-65, 18 NRC 774, 777-78 (1983).

There is no legal requirement for a notice-and-comment rulemaking proceeding concerning the Commission's statutory concurrence in the Department of Energy's General Guidelines for Recommendation of Sites for Nuclear Waste Repositories, pursuant to Section 112(a) of the Nuclear Waste Policy Act of 1982. NRC Concurrence in High-Level Waste Repository Safety Guidelines Under Nuclear Waste Policy Act of 1982, CLI-83-26, 18 NRC 1139, 1140 (1983).

2.3 Location of Hearing

2.3.1 Public Interest Requirements Affecting Hearing Location

(RESERVED)

2.3.2 Convenience of Litigants Affecting Hearing Location

(SEE 3.3.5.2)

2.4 Issues for Hearing

(SEE 3.4 to 3.4.6)

2.5 Notice of Hearing

10 CFR 2.105(a)(4), in effect in 1982, required that the Commission issue a notice of proposed action - also called a notice of opportunity for hearing - only with respect to an application for a facility license, an application for a license to receive radioactive waste for commercial disposal, an application to amend such licenses where significant hazards considerations are involved, or an application for "any other license or amendment as to which the Commission determines that an opportunity for public hearing should be afforded." A materials license amendment does not fall into any of these categories. Kerr-McGee Corporation (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232, 245 (1982), aff'd sub nom. City of West Chicago v. NRC, 701 F.2d 632 (7th Cir. 1983).

10 CFR § 2.105 requires that formal procedures under Part 2, Subpart G, be adhered to following a notice of proposed action issued under § 2.105. The Rules of Practice do not provide latitude to a Board to convene an informal hearing. General Electric Co. (GETR Vallecitos), LBP-83-19, 17 NRC 573, 576 (1983).

2.5.1 Contents of Notice of Hearing

Operating license proceedings start with the notice of proposed action (10 CFR § 2.105) and are separate from prior proceedings. Thus, a Licensing Board in a construction permit hearing may not order that certain issues be tried at the OL proceeding. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), CLI-80-12, 11 NRC 514, 517 (1980).

A Licensing Board does not have the power to explore matters beyond those which are embraced by the notice of hearing for the particular proceeding. This is a holding of general applicability. Portland General Electric Company (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-290 n.6 (1979); Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-171 (1976). See also Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 426 (1980); Northern Indiana Public Service Company (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 565 (1980).

A notice of hearing must correspond to the agency's statutory authority over a given matter; it cannot confer or broaden that jurisdiction to matters expressly proscribed by law. Florida Power and Light Co. (St. Lucie Plant, Unit No. 2), ALAB-661, 14 NRC 1117, 1123 (1981).

2.5.2 Adequacy of Notice of Hearing

One receiving filings in a proceeding is charged with reading and knowing matters therein which might affect his rights. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7, 13 (1980).

Where an original notice of hearing is too narrowly drawn, a requirement in a subsequent notice that those who now seek to intervene state that they did not intervene before because of limitations in the original notice was not improper. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7, 10 (1980).

2.5.3 Publication of Notice of Hearing in Federal Register

In Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 & 2), ALAB-445, 6 NRC 865 (1977), it was held that, while 10 CFR § 2.104(a) requires that notice of hearing initiating a construction permit proceeding be published in the Federal Register at least 30 days prior to commencement of hearing, it does not require that such notice establish time, place and date for all phases of the evidentiary hearings. However, in an unpublished opinion issued on December 12, 1977, the Federal District Court for the Northern District of Mississippi held that the interpretation of the notice requirements by the Appeal Board in Yellow Creek was erroneous and that at least 30 days prior public notice of the time, place and date of hearing must be provided.

The Licensing Board rejected Petitioner's argument that "mere notice in the Federal Register ... is inadequate notice" The Federal Register Act expressly provides that such publication constitutes notice to "all persons residing within the States of the Union" (44 U.S.C. 1508). See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). See also Long Island Lighting Company (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631 (1975); Florida Power and Light Company (Turkey Point Nuclear Generating Units 3 and 4), LBP-79-21, 10 NRC 183, 191-192 (1979).

In an operating license amendment proceeding, the Licensing Board ruled that the law required the NRC to publish

once in the Federal Register notice of its intention to act on the application for amendment to the operating license. Turkey Point, supra, LBP-79-21, 10 NRC at 192.

Publication in the Federal Register of conditions on intervention is notice as to all of those conditions, and one cannot excuse a failure to meet those conditions by a claimed lack of knowledge. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7, 10 (1980).

2.5.4 Requirement to Renotify

Where a full-term operating license proceeding had been delayed by a lengthy NRC Staff review and the original notice of the opportunity for a hearing had been issued ten years earlier, a Licensing Board found it necessary to renotify the opportunity for a hearing. Rochester Gas and Electric Corp. (R.E. Ginna Nuclear Plant, Unit 1), LBP-83-73, 18 NRC 1231, 1233 (1983), citing, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-539, 9 NRC 422 (1979) wherein the Appeal Board opined that a hearing notice issued "perhaps 5 to 10 years" earlier is "manifestly stale". The renotify cannot limit the scope of contentions to those involving design changes or those based on new information. The new notice must allow the raising of any issues which have not been previously heard and decided. See Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 386-387 (1979).

2.6 Prehearing Conferences

Prehearing conference matters are governed generally by 10 CFR §§ 2.751a, 2.752.

There are several types of prehearing conferences, each of which serves a different purpose. For a discussion of the types of prehearing conferences and of the purposes of such conferences, see Wisconsin Electric Power Company (Point Beach Nuclear Plant, Units 1 & 2), LBP-78-23, 8 NRC 71, 76 (1978).

The purposes of a general prehearing conference, in general, are set out in 10 CFR § 2.752(a). Such a prehearing conference should be held within 60 days after completion of discovery. 10 CFR § 2.752(a). "Special" prehearing conferences, provided for by 10 CFR § 2.751a and applicable only to contested proceedings, may be utilized to consider the sufficiency of petitions to intervene and of issues raised by intervenors. Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 245 (1973).

§ 2.6.1

Where a party has an objection to the scheduling of the prehearing phase of a proceeding, he must lodge such objection promptly. Late requests for changes in scheduling will not be countenanced absent extraordinary unexpected circumstances. Consolidated Edison Co. of N.Y., Inc. (Indian Point Nuclear Generating Station, Units 1, 2 & 3), ALAB-377, 5 NRC 430 (1977).

A party seeking to be excused from participation in a prehearing conference should present its justification in a request filed before the date of the conference. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-488, 8 NRC 187, 191 (1978).

2.6.1 Transcripts of Prehearing Conferences

Prehearing conferences may be stenographically reported. 10 CFR §§ 2.751a(c), 2.752(b).

2.6.2 Special Prehearing Conferences

Special prehearing conferences are covered by 10 CFR § 2.751a. Such prehearing conferences:

- (a) are required in contested proceedings only, 10 CFR § 2.751a, n.1a;
- (b) will usually be held within 90 days of the issuance of notice of hearing or such other time as the Commission or presiding officer may deem appropriate, 10 CFR § 2.751a(a);
- (c) will be utilized to rule on petitions to intervene unless this has already been done by a previous Licensing Board appointed for that purpose. Cf., Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 245 (1973);
- (d) may be utilized to exclude certain issues raised by petitions to intervene, the adequacy of which was not ruled upon when the petition was allowed, Duquesne Light Co., ALAB-109 *supra*;
- (e) may be used to establish a schedule for further actions in the proceeding, to direct further informal conferences, and to establish other courses of action, as set forth in 10 CFR § 2.751a(a) and (b), to expedite the proceeding.

2.6.3 Prehearing Conference Order

2.6.3.1 Effect of Prehearing Conference Order

A prehearing conference order may describe action taken at the conference, schedule further actions, describe stipulations agreed to, identify key issues, provide for discovery and the like. The order should finalize the issues to be considered, 10 CFR Part 2, Appendix A, ¶ II(c), and will control the subsequent course of proceedings unless modified for cause. 10 CFR §§ 2.751a(d), 2.752(c).

2.6.3.2 Objections to Prehearing Conference Order

Objections to the prehearing conference order may be filed by parties other than the Staff within 5 days after service of the order and by the Staff within 10 days after service. 10 CFR §§ 2.751a(d), 2.752(c). Parties may not file replies to such objections unless the Board so directs. Id.

2.6.3.3 Appeal from Prehearing Conference Order

Since a prehearing conference order is interlocutory in nature, it is not generally appealable except with regard to matters for which interlocutory appeal is provided. In this vein that portion of a prehearing conference order which grants or wholly denies a petition for leave to intervene is appealable under 10 CFR § 2.714a. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-130, 6 AEC 423, 424 (1973).

The action of a Licensing Board in provisionally ordering a hearing and in preliminarily ruling on petitions for leave to intervene is not appealable under 10 CFR § 2.714a in a situation where the Board cannot rule on contentions and the need for an evidentiary hearing until after the special prehearing conference required under 10 CFR § 2.751a and where the petitioner denied intervention may qualify on refiling. Consumers Power Co. (Midland Plant, Units 1 & 2), LBP-78-27, 8 NRC 275, 280 (1978).

2.7 Conference Calls

Both prior to the start of a hearing and sometimes during recesses thereof, it may become necessary for the Board to communicate quickly with the parties. In this vein, the practice has grown up of using telephone conference calls. The Appeal Board has indicated that such calls should not be utilized unless all parties participate except in the case of the most dire necessity. Puerto Rico Water Resources Authority (North Coast Nuclear Plant, Unit 1), ALAB-313, 3 NRC 94, 96 (1976). If any rulings are made, the Licensing Board must make and enter a written order reflecting

the ruling directly thereafter. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-334, 3 NRC 809, 814-815 (1976).

Where a party informs an adjudicatory board that it is not interested in a matter to be discussed in a conference call between the board and the other litigants, that party cannot later complain that it was not consulted or included in the conference call. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 269 at n.63 (1978).

2.8 Prehearing Motions

2.8.1 Prehearing Motions Challenging ASLB Composition

Disqualification of adjudicatory board members is covered generally by 10 CFR § 2.704.

In Consumers Power Company (Midland Plant, Units 1 & 2), ALAB-101, 6 AEC 60 (1973), the Appeal Board listed the circumstances under which a board member is subject to disqualification. Those circumstances include situations in which:

- (1) the board member has a direct, personal, substantial pecuniary interest in the results of the case;
- (2) the board member has a personal bias against a participant;
- (3) the board member has served in a prosecutory or investigative role with regard to the same facts as are in issue;
- (4) the board member has prejudged factual -- as distinguished from legal or policy -- issues;
- (5) the board member has engaged in conduct which gives the appearance of personal bias or prejudgment of factual issues.

A litigant may move for disqualification of any board member who, by word or deed, has manifested a conflict of interest or a bias covered by the above listing.

2.8.1.1 Contents of Motion Challenging ASLB Composition

In Duquesne Light Co. (Beaver Valley Power Station, Units 1 & 2), ALAB-172, 7 AEC 42 (1974), the Appeal Board summarized the requirements for disqualification motions as follows:

- (1) motions must be accompanied by affidavits establishing a basis for the charge;
- (2) motions must be filed in a timely manner, citing, Consumers Power Co., ALAB-101, supra; Commonwealth Edison Co. (LaSalle County Nuclear Power Station, Units 1 & 2), CLI-73-8, 6 AEC 169 at n.1 (1973);
- (3) motions for disqualification, as with all other motions, must be served on all parties or their attorneys, citing, 10 CFR §§ 2.701(b), 2.730(a).

The requirement of an affidavit must be met even if the basis for the motion is founded on matters of public record. Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB-225, 8 AEC 379 (1974).

2.8.1.2 Evidence of Bias in Challenges to ASLB Composition

Although no specific guidelines can be set as to the type or quantum of evidence sufficient to support a disqualification motion, it is clear that the mere fact that a Board issued a large number of unfavorable or even erroneous rulings with respect to a given party is not evidence of bias. To establish bias, something more must be shown than that the presiding officials decided matters incorrectly; to be wrong is not necessarily to be partisan. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 246 (1974).

Nor is an alleged institutional bias sufficient for disqualification. Tennessee Valley Authority (Bellefonte Nuclear Plant, Units 1 & 2), ALAB-164, 6 AEC 1143 (1973).

2.8.1.3 Waiver of Challenges to ASLB Composition

If a party has reason to believe that there are grounds for disqualification, he must raise the question at the earliest possible moment. Failure to move for disqualification as soon as the information giving rise to such a claim comes to light amounts to a waiver of the objection. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 385 (1974); Northern Indiana Public Service Co., ALAB-224, supra; Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-101, 6 AEC 60, 64 (1973); Public Service Electric & Gas Co. (Atlantic Nuclear Generating Station, Units 1 & 2), LBP-78-5, 7 NRC 147, 149 (1978).

2.9 Intervention

2.9.1 General Policy on Intervention

The general attitude of the Appeal Panel is that public participation through intervention is a positive factor in the licensing process and that intervenors perform a valuable function and are to be complimented and encouraged. See, e.g., Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-256, 1 NRC 10, 18 n.9 (1975); Consolidated Edison Co. of N.Y., Inc. (Indian Point Nuclear Generating Station, Unit 2), ALAB-243, 8 AEC 850, 853 (1974); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-229, 8 AEC 425 (1974); Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-183, 7 AEC 222 (1974).

The statutory mandate does not confer the automatic right of intervention upon anyone. The Commission may condition the exercise of that right upon the meeting of reasonable procedural requirements. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 469 (1982), vacated in part on other grounds, CLI-83-19, 17 NRC 1041 (1983).

A petitioner for intervention is entitled to party status if he (1) establishes standing and (2) pleads at least one valid contention. Carolina Power and Light Co. and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 NRC 2069, 2070 (1982).

2.9.2 Intervenor's Need for Counsel

The NRC's Rules of Practice permit non-attorneys to appear and represent their organizations in agency proceedings. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1247 (1984), citing, 10 CFR § 2.713(b). Furthermore, lay representatives are not held to as high a standard as lawyers. But the right of participation accorded pro se representatives carries with it the corresponding responsibilities to comply with and be bound by the same agency procedures as all other parties, even where a party is hampered by limited resources. Three Mile Island, supra, 19 NRC at 1247, citing, Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981).

There is no requirement that an intervenor be represented by counsel in NRC proceedings. Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LBP-75-67, 2 NRC 813 (1975); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2),

ALAB-802, 21 NRC 490, 498 (1985). As a rule, pro se petitioners will be held to less rigid standards for pleading, although a totally deficient petition will be rejected. Public Service Electric & Gas Co. (Salem Nuclear Generating Station, Units 1 & 2), ALAB-136, 6 AEC 487 (1973). While there is no requirement that an intervenor be represented by counsel in NRC proceedings, several older cases seem to indicate a view that representation of a party by a non-lawyer is not sanctioned and that any party who does not appear pro se ought to be represented by a lawyer. See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 2), ALAB-471, 7 NRC 746, 748 (1978); Duke Power Co. (Cherokee Nuclear Station, Units 1, 2 & 3), ALAB-440, 6 NRC 642, 643 n.3 (1977); Virginia Electric & Power Company (North Anna Power Station, Units 1 & 2), Licensing Board Order of October 8, 1976 (unpublished). As the Three Mile Island and Cherokee cases cited amply demonstrate, however, any possible requirement that only lawyers appear in a representative capacity is usually waived, either explicitly or implicitly, as a matter of course.

Insofar as organizations are concerned, 10 CFR § 2.713(a) clearly limits representation to either an attorney or a member, and it can logically be read as precluding representation by an attorney and a member at the same time. But it does not appear to bar representation by a member throughout a proceeding if, at some earlier time during the proceeding, an attorney has made an appearance for the organization. Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Station), LBP-79-17, 9 NRC 723, 724 (1979).

Following the withdrawal of its lead counsel on the eve of hearing, an intervenor has an affirmative duty to request a postponement. A Board is not required to order a postponement *sua sponte*. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-802, 21 NRC 490, 498 (1985).

2.9.3 Petitions to Intervene

Intervention is covered generally in 10 CFR §§ 2.714, 2.714a.

In the first instance, the decision as to whether to grant or deny a petition to intervene or a request for a hearing lies with the Licensing Board. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Units 1 & 2), CLI-73-16, 6 AEC 391 (1973).

There is nothing in 10 CFR § 2.714 or the case law interpreting that rule which permits Licensing Boards to exclude certain groups because of their opinions on nuclear power, either generally or as related to specific plants, nor is there a Commission rule prescribing the conduct of any party (other than licensees or others subject to its regulatory jurisdictions) outside adjudicatory proceedings. Consolidated Edison Co. of New York (Indian Point, Unit 2); Power Authority of the State of New York (Indian Point, Unit 3), CLI-82-15, 16 NRC 27, 31, 32 (1982).

The testimony of experts sponsored by petitioner may make a valuable contribution to the record, but the merits of that testimony need not be decided in order to admit a petitioner as a party. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-82-117B, 16 NRC 2024, 2029 (1982).

In past operating license cases, petitions to intervene were sometimes considered and ruled upon by an ASLB especially appointed for that purpose, and a separate ASLB conducted separate proceedings if intervention were permitted. Pacific Gas & Electric Co. (Stanislaus Nuclear Project, Unit 1), ALAB-400, 5 NRC 1175, 1177-78 (1977). In construction permit cases, a single ASLB usually performed both tasks. See Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-130, 6 AEC 423, 424 n.2 (1973).

In ruling on a petition to intervene, the Licensing Board must consider, inter alia, the nature of petitioner's right under the Atomic Energy Act to be made a party to the proceeding, the nature and extent of petitioner's property, financial or other interest in the proceeding, and the possible effect of any Order which may be entered in the proceeding on the petitioner's interests. 10 CFR § 2.714(d); Washington Public Power Supply System (WPPSS Nuclear Projects No. 3 and No. 5), LBP-77-16, 5 NRC 650 (1977).

An intervention petition must, under 10 CFR § 2.714(a) (2), set forth with particularity certain factors regarding the petitioner's interest in the proceeding and address the criteria set forth in 10 CFR § 2.714(d). Florida Power and Light Co. (Turkey Point Plant, Units 3 and 4), CLI-81-31, 14 NRC 959, 960 (1981); Consumers Power Co. (Big Rock Point Plant), CLI-81-32, 14 NRC 962, 963 (1981).

A petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the

results of the proceeding, including the reasons why petitioner should be permitted to intervene, and the specific aspect of the subject matter of the proceeding as to which petitioner wishes to intervene. 10 CFR § 2.714(a)(2). The burden is on the petitioner to satisfy these requirements. 10 CFR § 2.732, Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 331 (1983).

Petitioners for intervention are required by Commission regulations to set forth in their petitions their interest in the proceeding, how that interest might be affected by the result of the proceeding, the reasons why they should be permitted to intervene, and the specific aspects of the subject matter as to which intervention is sought. Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1431 (1982), citing, 10 CFR § 2.714(a)(2).

The ASLB must make specific determinations as to whether the petition is proper and meets the requirements for intervention and must articulate in reasonable detail the basis for its determination. Duquesne Light Co., et al. (Beaver Valley Power Station, Unit 1), ALAB-105, 6 AEC 181 (1973); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-104, 6 AEC 179 (1973).

Assuming that the requisite personal interest of the intervenor is shown, if the ASLB determines that there is present at least one contention which meets applicable requirements, intervention will be permitted. The ASLB has no duty to consider additional contentions for the purpose of determining whether intervention should be permitted. Mississippi Power & Light Co., ALAB-130 supra at 6 AEC 424; Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372 (1973); Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 245 (1973). Although 10 CFR § 2.714 has been amended with regard to the time for filing contentions, the "one good contention" rule remains. 10 CFR § 2.714(b). Puget Sound Power and Light Co. (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 985 (1982), citing, Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Station), LBP-80-14, 11 NRC 570, 571 (1980).

10 CFR § 2.714 now permits the amendment of petitions to intervene and contentions up to 15 days prior to the first prehearing conference. The presiding board may, of course, set a different time period pursuant to 10 CFR § 2.711. General Electric Co. (GETR Vallecitos), LBP-83-19, 17 NRC 573, 578 (1983).

A Petitioner must advance at least one admissible contention in order to be permitted to intervene in a proceeding. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1432 (1982), citing, 10 CFR § 2.714(a)(2), Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 424 (1973).

Pro se petitioners will be held to less rigid standards of clarity and precision with regard to the petition to intervene. Nevertheless, a totally deficient petition will be rejected. Public Service Electric & Gas Co. (Salem Nuclear Generating Station, Units 1 & 2), ALAB-136, 6 AEC 487, 489 (1973).

In NRC proceedings in which a hearing is not mandatory but depends upon the filing of a successful intervention petition, an "intervention" Licensing Board has authority only to pass upon the intervention petition. If the petition is granted, thus giving rise to a full hearing, a second Licensing Board, which may or may not be composed of the same members as the first Board, is established to conduct the hearing. Wisconsin Electric Power Company (Point Beach Nuclear Plant, Units 1 & 2), LBP-78-23, 8 NRC 71, 73 (1978). See also Commonwealth Edison Co. (Byron Station, Units 1 and 2), LBP-81-30-A, 14 NRC 364, 366 (1981), citing, Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit 1), ALAB-400, 5 NRC 1175 (1977).

Section 189a of the Atomic Energy Act does not provide an unqualified right to a hearing. The Commission is authorized to establish reasonable regulations on procedural matters like the filing of petitions to intervene and on the proffering of contentions. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1045 (1983), citing, BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974); Easton Utilities Commission v. AEC, 424 F.2d 847 (D.C. Cir. 1970).

The identity of specific individual members of a petitioner organization whose interests are being represented by that organization is not viewed as an integral and material portion of the petition to intervene. Any change in membership, therefore, does not require an amendment of the petition. Washington Public Power Supply System (WPPSS Nuclear Project 1), LBP-83-59, 18 NRC 667, 669 (1983).

While it is true that a petitioning organization must disclose the name and address of at least one member with standing to intervene so as to afford the other litigants

the means to verify that standing exists, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-575, 9 NRC 377, 389-400 (1979), there is no requirement that the identification of such a member or members be made in the petition to intervene or in an attached affidavit. Washington Public Power Supply System (WPPSS Nuclear Project 1), LBP-83-59, 18 NRC 667, 669 (1983).

The provision in original 10 CFR § 2.714(a), that a petition to intervene be accompanied by a supporting affidavit setting forth the facts pertaining to the petitioner's interest, was abolished effective May 26, 1978. 43 Fed. Reg. 17,798 (1978). Washington Public Power Supply System (WPPSS Nuclear Project 1), LBP-83-59, 18 NRC 667, 669 (1983).

Once a member has been identified sufficiently to afford verification by the other parties and the petition to intervene has been granted, it is presumed that the organizational petitioner continues to represent individual members with standing to intervene who authorize the intervention. It is doubtful that the death or relocation outside the geographical zone of interest of the only named members upon whom standing was based would defeat this presumption and require a further showing of standing. Washington Public Power Supply System (WPPSS Nuclear Project 1), LBP-83-59, 18 NRC 667, 669 (1983).

2.9.3.1 Pleading Requirements

Under 10 CFR § 2.714, a petition to intervene must:

- (1) be in writing;
- (2) identify the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene;
- (3) set forth with particularity the interest of the petitioner in the matter, the manner in which that interest may be affected by the proceeding, and the reasons why the petitioner should be permitted to intervene with particular reference to the petitioner's right to be made a party under the Atomic Energy Act, the nature and extent of petitioner's property, financial or other interest in the proceeding, and the possible effect of any order entered in the proceeding on petitioner's interest.

In addition, prior to the first prehearing conference, the petitioner must file a supplement to his petition to intervene which sets forth the contentions the petitioner

seeks to have litigated and the basis for each contention set forth with reasonable specificity. 10 CFR § 2.714(b). Illinois Power Co., (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1735, 1737 (1981). Public Service Co. of New Hampshire. (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1654 (1982). Where a contention is made up of a general allegation which, standing alone, would not be admissible under 10 CFR § 2.714(b), plus one or more alleged bases for the contention set forth with reasonable specificity, the matters in controversy raised by each such contention are limited in scope to the specific alleged basis or bases set forth in the contention. Clinton, supra at 1737.

Under 10 CFR § 2.714 and 10 § CFR 2.714(b) an intervention petition must not only set forth with particularity the interest of the petitioner and how that interest may be affected by the proceeding, but must also include the bases for each contention, sufficiently detailed and specific to demonstrate that the issues raised are admissible and that further inquiry is warranted. Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), LBP-82-4, 15 NRC 199, 206 (1982).

In general, these elements have been construed as requiring the petitioner to show:

- (a) that he has a personal interest in the matter (e.g., residence in proximity to the reactor - see Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188 (1973);
- (b) how that interest may be adversely affected;
- (c) the specific contentions as to which the petitioner desires to participate.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-73-10, 6 AEC 173 (1973); Florida Power and Light Co. (Turkey Point Plant, Units 3 and 4), CLI-81-31, 14 NRC 959, 960 (1981), citing, Public Service Co. of Indiana (Marble Hill Nuclear Generating Station Units 1 and 2), CLI 80-10, 11 NRC 438 (1980); Consumers Power Co. (Big Rock Point Plant), CLI-81-32, 14 NRC 962, 963 (1981).

In DPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974), the Court of Appeals for the District of Columbia Circuit upheld various aspects of 10 CFR § 2.714, including the requirement that contentions be specified, and the requirement that the basis for contentions be set forth.

Section 189a of the Atomic Energy Act does not provide a non-discretionary right to a hearing on all issues arguably related to an acknowledged enforcement problem without regard to the scope of the enforcement action actually proposed or taken. In order to be granted leave to intervene, one must demonstrate an interest affected by the action, as required by 10 CFR § 2.714. Boston Edison Co. (Pilgram Nuclear Power Station), CLI-82-16, 16 NRC 44, 45 (1982), citing, BPI v. Atomic Energy Commission, 502 F.2d 424 (D.C. Cir. 1974).

Petitions drawn by counsel experienced in NRC practice must exhibit a high degree of specificity. In contrast, Licensing Boards are to be lenient in this respect for petitions drawn pro se or by counsel new to the field or to the bar. Kansas Gas & Electric Co. (Wolf Creek Generating Station), ALAB-279, 1 NRC 559, 576-577 (1975). For a more recent case acknowledging that a pro se petitioner for intervention should not be held to the same standards of clarity and precision to which a lawyer might reasonably be expected to adhere in the petition to intervene, see Wisconsin Public Service Corporation, et al. (Kewaunee Nuclear Power Plant), LBP-78-24, 8 NRC 78, 82 (1978).

Although a totally deficient pleading may not be justified on the basis that it was prepared without the assistance of counsel, a pro se petitioner is not "to be held to those standards of clarity and precision to which a lawyer might reasonably be expected to adhere." Public Service Electric and Gas Company (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973), cited in Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 546 (1980). Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-82-63, 16 NRC 571, 578 (1982).

A petitioner is not permitted to incorporate massive documents by reference as the basis for, or a statement of, his contentions. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 & 2), LBP-76-10, 3 NRC 209, 216 (1976).

A petition to intervene which seeks to raise antitrust contentions must comply with the requirements of 10 CFR § 2.714 and must also set forth with particularity:

- (1) facts which describe a situation inconsistent with the antitrust laws or their underlying policies;
- (2) facts which describe the existence of a meaningful nexus between the activities under the nuclear license and the aforementioned anticompetitive "situation";

- (3) the specific relief sought, including whether, how and to what extent any license conditions imposed by the attorney general fail to provide the requested relief.

Wolf Creek, ALAB-279 supra; see also Duke Power Co., et al. (Catawba Nuclear Station, Units 1 and 2), LBP-81-1, 13 NRC 27, 32 (1981).

Petitions to intervene must initially specify the "aspect or aspects" of the subject matter of the proceeding as to which the petitioner wishes to intervene. An "aspect" is broader than a "contention" but narrower than a general reference to the NRC's operating statutes. Consumers Power Co. (Midland Plant, Units 1 & 2), LBP-78-27, 8 NRC 275, 278 (1978).

Under 10 CFR § 2.714 it is no longer necessary for petitioners for intervention to advance at least one viable contention when initially filing a petition to intervene. The petition may later be supplemented to include contentions. There is no single date when the petition must be supplemented. Pursuant to CFR § 2.714(b), the supplement may be submitted without leave of the presiding officer 15 days prior to the special prehearing conference or, if none is held, the first prehearing conference. Wisconsin Electric Power Company (Point Beach Nuclear Plant, Units 1 & 2), LBP-78-23, 8 NRC 71, 74 (1978).

The "bases" requirement in 10 CFR § 2.714 is not to be equated with proof. The bases requirement is a pleading requirement concerning minimally acceptable allegations.

An intervenor can meet that requirement and not have any evidence in support of it at that point. In passing upon the question as to whether an intervention petition should be granted, it is not the function of a Licensing Board to reach the merits of any contention contained therein. Section 2.714 does not require the petition to detail the evidence which will be offered in support of each contention. It is enough that the basis for the contention is identified with reasonable specificity. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1943 (1982), citing, Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973).

Where an original notice of hearing is overly narrowly drawn, a requirement that those who subsequently seek to intervene state that they did not intervene before because of limitations in the original notice was not an abuse of discretion. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7, 10 (1980).

The petition of an organization to intervene must show that the person signing it has been authorized by the organization to do so. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 77 (1979).

2.9.3.2 Defects in Pleadings

Although the requirements of 10 CFR § 2.714 must ultimately be met, the Appeal Panel has made it clear that every benefit of the doubt should be given to the potential intervenor in order to obviate dismissal of an intervention petition because of inarticulate draftsmanship or procedural or pleading defects. As such, petitioners will usually be permitted to amend petitions containing curable defects. Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-145, 6 AEC 631 (1973). A Licensing Board itself has no duty to recast contentions offered by a petitioner to make them acceptable under the regulations. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 406 (1974); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1660 (1982). Refusal to do so cannot constitute error. Seabrook, supra, citing, Zion, supra.

Intervention petitions and requests for hearing cannot properly raise antitrust issues and health and safety issues in the same proceedings. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-81-1, 13 NRC 27, 32 (1981).

2.9.3.3 Time Limits/Late Petitions

The Commission's regulations at 10 CFR § 2.714(a)(1) provide that nontimely filings of petitions to participate as a party will not be entertained absent a determination that the petition should be granted based upon a balancing of five factors. (See 2.9.3.3.3 for five factors). Out of the five factors enumerated in 10 CFR § 2.714(a), the factors involving the availability of other means to protect petitioner's interest and the ability of other parties to represent petitioner's interest are entitled to less weight than the other three. (See 2.9.3.3.3). Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), LBP-82-92, 16 NRC 1376, 1381, 1384 (1982); Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-17, 19 NRC 878, 887 (1984), citing, Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1767 (1982).

Regarding a Petition to intervene, some weight may be attached to the fact that lateness, though not justified, is not extreme. It is permissible to consider the fact that a petition was filed only two months late if the start of the proceeding will not be substantially delayed. Puget Sound Power and Light Co. (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 985 (1982), citing, Duke Power Co. (Amendment to Materials License SNM - 1773 - Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 150 (1979).

If the lateness of a Petition to intervene is not egregious, and will not cause substantial delay to the parties, those considerations will outweigh the fact that the balance of the five factors required under 10 CFR § 2.714(a)(1) tips slightly against the petitioner. Skagit/Hanford, *supra*, 16 NRC at 985.

The exclusion from a proceeding of persons or organizations who have slept on their rights does not offend any public policy favoring broad citizen involvement in nuclear licensing adjudications. Assuming that such a policy finds footing in Section 189a of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2239(a), it must be viewed in conjunction with the equally important policy favoring the observance of established time limits. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 396 n.37 (1983).

2.9.3.3.1 Time for Filing Intervention Petitions

Petitions to intervene or requests for hearing must be filed not later than the time specified in the notice for filing or as provided by the Commission, the presiding officer or the Licensing Board designated to rule on petitions and/or requests for hearing, or as provided in 10 CFR § 2.102(d)(3) (with regard to antitrust matters); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-42, 18 NRC 112, 116 (1983).

A Licensing Board did not abuse its discretion in shortening the time to file contentions where there were many intervenors. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7, 13 (1980).

2.9.3.3.2 Sufficiency of Notice of Time Limits on Intervention

Although the Appeal Board has stated that it would leave open the question as to whether Federal Register notice without more is adequate to put a potential intervenor on notice for filing intervention petitions, Pennsylvania

Power and Light Co. (Susquehanna Steam Electric Station, Units 1 & 2), ALAB-148, 6 AEC 642, 643 n.2 (1973), the Board tacitly assumed that such notice was sufficient in Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 & 2), ALAB-341, 4 NRC 95 (1976) (claims by petitioner that there was a "press blackout" and that he was unaware of Commission rules requiring timely intervention will not excuse untimely petition for leave to intervene).

2.9.3.3.3 Consideration of Untimely Petitions to Intervene

Section 10 CFR 2.714(a) provides that nontimely petitions to intervene or requests for hearing will not be considered absent a determination that the petition or request should be granted based upon a balancing of the following factors:

- (1) good cause, if any, for failure to file on time;
- (2) the availability of other means for protecting the petitioner's interests;
- (3) the extent to which petitioner's participation might reasonably assist in developing a sound record;
- (4) the extent to which the petitioner's interest will be represented by existing parties; and
- (5) the extent to which petitioner's participation will broaden the issues or delay the proceeding.

Puget Sound Power and Light Co. (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 984 (1982); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-82-96, 16 NRC 1408, 1429 (1982); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 331 n.3 (1983); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 390 n.3 (1983), citing, 10 CFR § 2.714(a)(1); Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1170 n.3 (1983); Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-17, 19 NRC 878, 883 (1984); General Electric Co. (GETR Vallecitos), LBP-84-54, 20 NRC 1637, 1643-1644 (1984).

This consideration must be weighed against the petitioner's strong interest in the proceeding under 10 CFR § 2.714(d). Skagit/Hanford, supra, 16 NRC at 984.

In ruling on a petition for leave to intervene that is untimely, the Commission must consider, in addition to the factors set forth in 10 CFR § 2.714(a)(1), the following factors set forth in 10 CFR § 2.714(d):

(1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 331 n.3 (1983).

Amendments to Section 2.714 make it clear that a showing of good cause for the untimeliness of a petition is only one factor to be considered and balanced. Prior to these amendments, the "good cause" factor was given special treatment, although a showing of good cause would not relieve a Licensing Board of its obligation to consider the other factors. Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-431, 6 NRC 460 (1977); Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-420, 6 NRC 8, 22 (1977); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 2), ALAB-384, 5 NRC 612 (1977); Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), LBP-82-4, 15 NRC 199 (1982); Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-82-117B, 16 NRC 2024, 2026 (1982). In addition, it has been held that even if a petitioner fails to establish good cause for the untimely petition, the other factors must be examined, Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), ALAB-292, 2 NRC 631 (1975), although the burden of justifying intervention on the basis of the other factors is considered to be greater when the petitioner fails to show good cause. Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273 (1975); USERDA (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383 (1976); Virginia Electric & Power Co. (North Anna Station, Units 1 & 2), ALAB-289, 1 NRC 395, 398 (1975).

Absent a showing of good cause for a very late filing, an intervention petitioner must make a "compelling showing" on the other four factors stated in 10 CFR § 2.714(a) governing late intervention. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982), citing, South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 894 (1981), aff'd sub nom. Fairfield United Action v. Nuclear Regulatory Commission, 679 F.2d 261 (D.C. Cir. 1982). See also Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1764 (1982), citing, Grand Gulf, supra, 16 NRC at 1730; Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 397 (1983); General Electric Co. (GETR Vallecitos), LBP-84-54, 20 NRC 1637, 1645 (1984).

A satisfactory explanation for failure to file on time does not automatically warrant the acceptance of a late-filed intervention petition. The additional four factors specified under 10 CFR § 2.714(a) must also be considered. However, where a late filing of an intervention petition has been satisfactorily explained, a much smaller demonstration with regard to the other factors of 10 CFR § 2.714(a) is necessary than would otherwise be the case. Wisconsin Public Service Corporation (Kewaunee Nuclear Power Plant), LBP-78-24, 8 NRC 78, 83 (1978).

The five factors listed in 10 CFR § 2.714(a) are to be considered in determining whether to allow late intervention. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508, 509 (1982); Cincinnati Gas and Electric Co. (Zimmer Nuclear Power Station, Unit 1), LBP-82-54, 16 NRC 210, 213-214 (1982). Newly acquired standing by moving to the vicinity of a plant is not alone enough to justify belated intervention. Nor does being articulate show a contribution can be made in developing the record. Other parties having the same interest weigh against allowing late intervention. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 241 (1980).

The first factor of those specified in 10 CFR § 2.714(a) is whether there exists "good cause, if any, for the failure to file on time." Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Power Station), ALAB-595, 11 NRC 860, 862 (1980). In considering the "good cause" factor, the Appeal Board pointed out that a strong excuse for lateness will attenuate the showing necessary on the other factors of 10 CFR § 2.714. It added that the 1978 amendment of the language of § 2.714, far from altering this substantive principle, regarding excuse for lateness, merely codified it. Puget Sound Power & Light Company (Skagit Nuclear Power Project, Units 1 and 2), ALAB-523, 9 NRC 58, 63 (1979). See also Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-420, 6 NRC 8, 22 (1977), affirmed, CLI-78-12, 7 NRC 939 (1978).

The burden of showing good cause is on the late petitioner. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-82-96, 16 NRC 1408, 1432 (1982).

The Appeal Board has held that whether there is "good cause" for a late filing depends entirely upon the substantiality of the reasons assigned for not having filed at an earlier date. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 887 n.5 (1981).

Although a concrete definition as to what constitutes "good cause" has not been established, certain excuses for delay have been held to be insufficient to justify late filing. For example, in Boston Edison Co. (Pilgrim Nuclear Power Station, Unit 2), LBP-74-63, 8 AEC 330 (1974), aff'd, ALAB-238, 8 AEC 656 (1974), it was held that neither the fact that the corporate citizens' group seeking to intervene was not chartered prior to the cut-off date for filing, nor the fact that the applicant changed its application by dropping one of the two units it intended to build, gave good cause for late filing. Similarly, claims by a petitioner that there was a "press blackout" and that he was unaware of the Commission's rules requiring timely intervention will not excuse an untimely petition for leave to intervene. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 & 2), ALAB-341, 4 NRC 95 (1976), nor will failure to read the Federal Register. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), LBP-81-11, 13 NRC 420, 423 (1981), citing, New England Power and Light Co. (NEP Units 1 and 2), LBP-78-18, 7 NRC 932, 933-934 (1978). The showing of good cause is required even though a petitioner seeks to substitute itself for another party. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 796 (1977).

Licensing Boards and Appeal Boards have both considered various excuses to determine whether they constitute "good cause." Newly-acquired organizational existence does not constitute good cause for delay in seeking intervention. Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-526, 9 NRC 122, 124 (1979), cited in Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Station), LBP-80-14, 11 NRC 570 (1980) and South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), LBP-81-11, 13 NRC 420, 423 (1981); and Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-17, 19 NRC 878, 887 (1984). Nor does preoccupation with other matters afford a basis for excusing a nontimely petition to intervene. Poor judgment or imprudence is not good cause for late filing. Puget Sound Power & Light Co. (Skagit Nuclear Power Project, Units 1 and 2), LBP-79-16, 9 NRC 711, 714 (1979). The Appeal Board did not accept as an excuse for late intervention the claim that petitioner, a college organization, could not meet an August petition deadline because most of its members were away from school during the summer and hence unaware of developments in the case. Such a consideration does not relieve an organization from making the necessary arrangements to insure that its interest is protected in its members' absence. On the other hand, new regulatory developments and the availability of new information may

constitute good cause for delay in seeking intervention. Duke Power Company (Amendment to Materials License SNM-1773 -- Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 148-149 (1979). See also Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Station), LBP-80-14, 11 NRC 570, 572-573 (1980).

The Licensing Board will not accept a petitioner's claim of excuse for late intervention where the petitioner failed to uncover and apply publicly available information in a timely manner. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-17, 19 NRC 878, 886-887 (1984), citing, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-42, 18 NRC 112, 117, aff'd, ALAB-743, 18 NRC 387 (1983). On the other hand, newly arising information has long been recognized as providing "good cause" for acceptance of a late contention. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-82-63, 16 NRC 571, 577 (1982), citing, Indiana and Michigan Electric Co. (Donald C. Cook Nuclear Plant, Units 1 and 2), CLI-72-75, 5 AEC 13, 14 (1972); Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Station), LBP-80-14, 11 NRC 570, 574 (1980), appeal dismissed, ALAB-595, 11 NRC 860 (1980).

Before admitting a contention based on new information, factors must be balanced such as the intervenor's ability to contribute to the record on the contention and the likelihood and effects of delay should the contention be admitted. However, in balancing those factors, the same weight given to each of them is not required. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-82-63, 16 NRC 571, 577 (1982), citing, South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 895 (1981).

Confusing and misleading letters from the Staff to a prospective pro se petitioner for intervention, and failure of the Staff to respond in a timely fashion to certain communications from such a petitioner, constitute a strong showing of good cause for an untimely petition. Wisconsin Public Service Corporation (Kewaunee Nuclear Power Plant), LBP-78-24, 8 NRC 78, 81-82 (1978). And where petitioner relied to its detriment on Staff's representations that no action would be immediately taken on licensee's application for renewal, elementary fairness requires that the action of the Staff could be asserted as an estoppel on the issue of timeliness of petition to intervene, and the petition must be considered even after the license has been issued. Armed Forces Radiobiology Research Institute (Cobalt-60 Storage Facility), LBP-82-24, 15 NRC 652, 658 (1982), rev'd on other grounds, ALAB-682, 16 NRC 150 (1982).

A petitioner's claim that it was lulled into inaction because it relied upon the State, which later withdrew, to represent its interests does not constitute good cause for an untimely petition. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 796 (1977). A petitioner who has relied upon a State participating pursuant to 10 CFR § 2.715(c) to represent her interests in a proceeding cannot rely on her dissatisfaction with the State's performance as a valid excuse for a late-filed intervention petition where no claim is made that the State undertook to represent her interests specifically, as opposed to the public interest generally. Duke Power Company (Cherokee Nuclear Station, Units 1, 2 & 3), ALAB-440, 6 NRC 642 (1977). See also South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), LBP-81-11, 13 NRC 420, 423 (1981). Nor will an explanation that full-time domestic and other responsibilities was the reason for filing an intervention petition almost three years late suffice. Cherokee, supra.

Just as a petitioner may not rely upon interests being represented by another party and then justify an untimely petition to intervene on the others' withdrawal, so a petitioner may not rely on the pendency of another proceeding to protect its interests and then justify a late petition on that reliance when the other petition fails to represent those interests. A claim that petitioner believed that its concerns would be addressed in another proceeding will not be considered good cause. Consolidated Edison Co. (Indian Point Station, Unit No. 2), LBP-82-1, 15 NRC 37, 39-40 (1982); Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-82-117B, 16 NRC 2024, 2027 (1982). It must be established that petitioners were furnished erroneous information on matters of basic fact and that it was reliance upon that information that prompted their own inaction. Palo Verde, supra, 16 NRC at 2027-2028.

Where no good excuse is tendered for the tardiness, the petitioner's demonstration on the other factors must be particularly strong. Duke Power Company (Perkins Nuclear Station, Units 1, 2, and 3), ALAB-431, 6 NRC 460, 462 (1977) and cases there cited. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-17, 19 NRC 878, 887 (1984); Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-82-63, 16 NRC 571, 577 (1982), citing, Nuclear Fuel Services, Inc. and New York State Atomic and Space Development Authority (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975). Absent a showing of good cause for late filing, an

intervention petitioner must make a "compelling showing" on the other four factors stated in 10 CFR § 2.714(a) governing late intervention. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982), citing, South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 894 (1981), aff'd sub nom. Fairfield United Action v. Nuclear Regulatory Commission, 679 F.2d 261 (D.C. Cir. 1982).

In determining how compelling a showing a petitioner must make on the other four factors, a Licensing Board need not attach the same significance to a delay of months as to a delay involving a number of years. The significance of the tardiness, whether measured in months or years, will generally depend on the posture of the proceeding at the time the petition surfaces. Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1173 (1983), citing, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 398-399 (1983).

With regard to the second factor - other means to protect petitioner's interest - the question is not whether other parties will adequately protect the interest of the petitioner, but whether there are other available means whereby the petitioner can itself protect its interest. Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), ALAB-292, 2 NRC 631 (1975).

The second factor in 10 CFR § 2.714(a) points away from allowing late intervention if the interest which the petitioner asserts can be protected by some means other than litigation. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-82-96, 16 NRC 1408, 1433 (1982).

The suggestion that an organization could adequately protect its interest by submitting a limited appearance statement gives insufficient regard to the value of participational rights enjoyed by parties - including the entitlement to present evidence and to engage in cross-examination. Similarly, assertions that the organization might adequately protect its interest by making witnesses available to a successful petitioner or by transmitting information in its possession to appropriate State and local officials are without merit. Duke Power Company (Amendment to Materials License SNM-1773 -- Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 150 n.7 (1979).

Until the parties to a proceeding that oppose a late intervention petition suggest another forum that appears to promise a full hearing on the claims petitioner seeks to raise, a petitioner need not identify and particularize other remedies as inadequate. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1767 n.6 (1982).

A petition under 10 CFR § 2.206 for a show cause proceeding is not an adequate alternative means of protecting a late petitioner's interests. The Section 2.206 remedy cannot substitute for the petitioner's participation in an adjudicatory proceeding concerned with the grant or denial ab initio of an application for an operating license. Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1175-1176 (1983).

Participation of the NRC Staff in a licensing proceeding is not equivalent to participation by a private intervenor. WPPSS, id., By analogy, the availability of nonadjudicatory Staff review outside the hearing process generally does not constitute adequate protection of a private party's rights when considering factor two under 10 CFR § 2.714(a). Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 384 n.108 (1985).

As to the third factor with regard to "assistance in developing the record," a late petitioner placing heavy reliance on this factor and claiming that it has substantial technical expertise in this regard should present a bill of particulars in support of such a claim. Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB-476, 7 NRC 759, 764 (1978). At the same time, it is not necessary that a petitioner have some specialized education, relevant experience or ability to offer qualified experts for a favorable finding on this factor to be made. South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), LBP-78-6, 7 NRC 209, 212-213 (1978).

When an intervention petitioner addresses the 10 CFR § 2.714(a)(3) criterion for late intervention requiring a showing of how its participation may reasonably be expected to assist in developing a sound record, it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony. See generally South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 894 (1981), aff'd sub nom. Fairfield United Action v. Nuclear Regulatory Commission, 679 F.2d 261 (D.C. Cir. 1982); Detroit Edison Co. (Greenwood Energy Center, Units

2 and 3), ALAB-476, 7 NRC 759, 764 (1978); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 399 (1983), citing, Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982); Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1177 (1983); Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-767, 19 NRC 984, 985 (1984); General Electric Co. (GETR Vallecitos), LBP-84-54, 20 NRC 1637, 1644 (1984).

Vague assertions regarding petitioner's ability or resources are insufficient. Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1766 (1982), citing, Grand Gulf, supra, 16 NRC at 1730.

It is the petitioner's ability to contribute sound evidence rather than asserted legal skills that is of significance in determining whether the petitioner would contribute to the development of a sound record. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-17, 19 NRC 878, 888 (1984), citing, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508, 513 n.14 (1982).

The ability to contribute to the development of a sound record is an even more important factor in cases where the grant or denial of the petition will also decide whether there will be any adjudicatory hearing. There is no reason to grant an inexcusably late intervention petition unless there is cause to believe that the petitioner not only proposes to raise at least one substantial safety or environmental issue, but is also able to make a worthwhile contribution on it. Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1180-1181 (1983). See also Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422 (1977).

With regard to the fourth factor of 10 CFR § 2.714(a), the extent to which petitioner's interest will be represented by existing parties, the fact that a successful petitioner has advanced a contention concededly akin to that of a late petitioner does not necessarily mean that the successful petitioner is both willing and able to represent the late petitioner's interest. Duke Power Company (Amendment to Materials License SNM-1773 - Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 150 (1979).

The Licensing Board in Florida Power and Light Company (Turkey Point Nuclear Generating Units 3 and 4), LBP-79-21, 10 NRC 183, 195 (1979) has expressed the view that NRC practice has failed to provide a clearcut answer to the question of whether the fourth factor, the extent to which the petitioner's interest will be represented by existing parties, is applicable when there are no intervening parties and no petitioners other than the late-comer, and a hearing will not be held if the late petitioner is denied leave to intervene. The Licensing Board reviewed past Licensing Board decisions on this question:

- (1) In St. Lucie and Turkey Point the Licensing Board decided that the fourth factor was not directly applicable, noting that without the petitioner's admission there would be no other party to protect petitioner's interest. Florida Power and Light Company (St. Lucie Plants, Units 1 and 2 and Turkey Point, Units 3 and 4), LBP-77-23, 5 NRC 789, 800 (1977).
- (2) In Virgil C. Summer the Licensing Board acknowledged uncertainty as to the applicability of factor four, but indicated that if the factor were applicable it would be given no weight because of the particular circumstances of that case. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), LBP-78-6, 7 NRC 209, 213-214 (1978).
- (3) In Kewaunee, the Board concluded that petitioners' interest would not be represented absent a hearing and decided that the fourth factor weighed in favor of admitting them as intervenors. Wisconsin Public Service Corp. (Kewaunee Nuclear Power Plant), LBP-78-24, 8 NRC 78, 84 (1978).

The Licensing Board ultimately ruled that the Commission intended that all five factors of 10 CFR § 2.714(a) should be balanced in every case involving an untimely petition. Florida Power and Light Company (Turkey Point Nuclear Generating Units 3 and 4), LBP-79-21, 10 NRC 183, 195 (1979). The Board also ruled that in the circumstances where denial of a late petition would result in no hearing and no parties to protect the petitioner's interest, the question, "To what extent will Petitioners' interest be represented by existing parties?" must be answered, "None." The fourth factor therefore, was held to weigh in favor of the late petitioners. Id.

In weighing the fourth factor, a board will not assume that the interests of a late petitioner will be adequately represented by the NRC Staff. The general public interest, as interpreted by the Staff, may often conflict

with a late petitioner's private interests or perceptions of the public interest. Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1174-1175 n.22 (1983). See also Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-80, 18 NRC 1404, 1407-1408 (1983). Contra Consolidated Edison Co. of New York (Indian Point, Unit 2), LBP-82-1, 15 NRC 37, 41 (1982).

In balancing the factors in 10 CFR § 2.714(a), the Licensing Board may take into account the petitioner's governmental nature as it affects the extent to which petitioner's interest will be represented by existing parties (fourth factor of 10 CFR § 2.714(a)), although the petitioner's governmental status in and of itself will not excuse untimely petitions to intervene. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-339, 4 NRC 20 (1976).

With respect to the fifth factor, the extent to which a late petitioner's participation would delay a proceeding, the Appeal Board in Puget Sound Power and Light Company (Skagit Nuclear Power Project, Units 1 and 2), ALAB-559, 10 NRC 162, 172 (1979), assessed this factor, as of the time of the Appeal Board's hearing, not as of the time the petitioners filed their petition. A person who attempts to intervene three and a half years after the petition deadline has no right to assume that his intervention will go unchallenged; rather, he has every right to assume that objections will be made and that the appellate process might be invoked. Skagit, supra, 10 NRC at 172-173.

The fifth factor includes only that delay which can be attributed directly to the tardiness of the petition. Jamesport, supra, ALAB-292, 2 NRC at 631; South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), LBP-81-11, 13 NRC 420, 425 (1981).

The fifth and final factor of 10 CFR § 2.714(a)(1), potential for delay, is also of immense importance in the overall balancing process. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 402 (1983).

While this factor is particularly significant, it is not dispositive. USERDA (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383 (1976). In considering the factor of delay, the magnitude of threatened delay must be weighed since not every delay is intolerable. Public Service Electric & Gas Co. (Hope Creek Generating Station, Units 1 & 2), LBP-77-9, 5 NRC 474 (1977). In addition, in deciding whether petitioners' participation

would broaden the issues or delay the proceeding, it is proper for the Licensing Board to consider that the petitioners agreed to allow issuance of the construction permit before their antitrust contentions were heard, thereby eliminating any need to hold up plant construction pending resolution of those contentions. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-420, 6 NRC 8, 23 (1977).

An untimely intervention petition need not introduce an entirely new subject matter in order to "broaden the issues" for the purposes of 10 CFR § 2.714(a); expansion of issues already admitted to the proceeding also qualifies. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 891 (1981).

The mere fact that a late petitioner will not cause additional delay or a broadening of the issue does not mean that an untimely petition should necessarily be granted. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 798 (1977). However, from the standpoint of precluding intervention, the delay factor is extremely important and the later the petition to intervene, the more likely it is that the petitioner's participation will result in delay. Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB 476, 7 NRC 759, 762 (1978). The question is whether, by filing late, the petitioner has occasioned a potential for delay in the completion of the proceeding that would not have been present had the filing been timely. Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1180 (1983).

In the instance of a very late petition, the strength or weakness of the tendered justification may thus prove crucial. The greater the tardiness, the greater the likelihood that the addition of a new party will delay the proceeding -- e.g., by occasioning the relitigation of issues already tried. Although the delay factor may not be conclusive, it is an especially weighty one. Project Management Corporation (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 394-95 (1976); Puget Sound Power & Light Company (Skagit Nuclear Power Project, Units 1 and 2), ALAB-552, 10 NRC 1, 5 (1979).

The permissive grant of intervention petitions inexcusably filed long after the prescribed deadline would pose a clear and unacceptable threat to the integrity of the entire adjudicatory process. Although Section 2.714(c) of the Rules of Practice may not shut the door firmly against unjustifiably late petitions, it does reflect the expectation that, absent demonstrable good cause

for the late filing, an individual so interested in the outcome of a particular proceeding will act to protect his interest within the established time limits. Skaqit, supra, 10 NRC at 172-173.

A late intervenor may be required to take the proceeding as it finds it. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 402 (1983), citing, Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 276 (1975). Licensing Boards have very broad discretion in their approach to the balancing process required under 10 CFR § 2.714(a). Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-342, 4 NRC 98 (1976). Given this wide latitude with regard to untimely petitions to intervene, a Licensing Board has the discretion to permit intervention, even though an acceptable excuse for the untimely filing is not forthcoming, if other considerations warrant its doing so. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-420, 6 NRC 8, 22 (1977).

A petitioner whose late-filed petition to intervene has met the five-part test of 10 CFR § 2.714(a)(1) need not meet any further late-filing qualifications to have its contentions admitted. It is not to be treated differently than a petitioner whose petition to intervene was timely filed. Washington Public Power Supply System (WPPSS Nuclear Project No. 3), LBP-84-17A, 19 NRC 1011, 1015 (1984).

In evaluating intervention petitions to determine whether the requisite specificity exists, whether there has been an adequate delineation of the basis for the contentions, and whether the issues sought to be raised are cognizable in an individual licensing proceeding, Licensing Boards will not appraise the merits of any of the assertions contained in the petition. But when considering untimely petitions, Licensing Boards are required to assess whether the petitioner has made a substantial showing of good cause for failure to file on time. In doing so, Boards must necessarily consider the merits of claims going to that issue. Florida Power & Light Co. (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 948-949 (1978).

Non-parties, participating under 10 CFR § 2.715(c), need not comply with the requirements of 10 CFR § 2.714 that mandate that intervenors either file their contentions in a timely fashion or show cause for their late intervention. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-35, 14 NRC 682, 688 (1981).

The key policy consideration for barring late intervenors is one of fairness, viz., "the public interest in the timely and orderly conduct of our proceedings." Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 648-649 (1979), citing, Nuclear Fuel Services, Inc., (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975).

A Licensing Board has no latitude to admit a new party, i.e., an "eleventh hour" intervenor, to a proceeding as the hearing date approaches in circumstances where: (1) the extreme tardiness in seeking intervention is unjustified; (2) the certain or likely consequence would be prejudice to other parties as well as delaying the progress of the proceeding, particularly attributable to the broadening of issues; and (3) the substantiality of the contribution to the development of the record which might be made by that party is problematic. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-643, 13 NRC 898, 900 (1981).

2.9.3.3.4 Appeals from Rulings on Late Intervention

Two considerations play key roles in Appeal Board deliberations on appeals from rulings on untimely intervention. The first is the Commission's admonition in Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975), that 10 CFR § 2.714(a) was purposely drafted with the idea of "giving the Licensing Boards broad discretion in the circumstances of individual cases." Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1171 (1983). See also Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 395-396 (1983); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-769, 19 NRC 995, 1000 n.13 (1984). Consequently, an Appeal Board is free to reverse a decision granting a tardy intervention petition only where it can fairly be said that the Licensing Board's action was an abuse of the discretion conferred by Section 2.714(a). Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-704, 16 NRC 1725, 1730 (1982); Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-342, 4 NRC 98 (1976). The second consideration flows from the principle that the propriety of the Board's action must be measured against the backdrop of the record made by the parties before it. Accordingly, on review the Appeal Board must generally credit the facts recounted in the papers supporting the petition to intervene to the extent that they deal with the merits of the issues. Insofar as the facts relate to the excuse for untimely filing, where they are not controverted by

opposing affidavits they must be taken as true. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-420, 6 NRC 8, 13 (1977). In view of all of this, the chances of overturning a Licensing Board's finding that intervention, although late, would be valuable are slight. See, e.g., Pacific Gas & Electric Co. (Diablo Canyon Nuclear Plant, Units 1 & 2), ALAB-223, 8 AEC 241 (1974).

In a decision vacating a Licensing Board's grant of late intervention because the grant was based on improper criteria, the Appeal Board refused to examine whether the petitioner had met the regulatory requirements for intervention (i.e., 10 CFR § 2.714). Puget Sound Power & Light Company (Skagit Nuclear Power Project, Units 1 and 2), ALAB-523, 9 NRC 58, 63-64 (1979), petition for review denied, Puget Sound Power & Light Co. (Skagit Nuclear Project, Units 1 and 2), unreported, (January 16, 1980).

Appeal Boards may closely scrutinize factual and legal components of the analysis underlying the Licensing Board's conclusion in reviewing Board decisions on untimely intervention petitions. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Plant, Unit 1), ALAB-642, 13 NRC 881, 885 (1981).

It is for the Licensing Boards to make the initial assessment of how late intervention petitions fare in light of the intervention criteria. Skagit, supra, 9 NRC at 63. An Appeal Board will not overturn a Licensing Board's denial of a late intervention petition under the criteria specified in 10 CFR § 2.714(a) unless the Board has abused its discretion. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1763, 1764 (1982). It is not sufficient for a party to establish that the Licensing Board might justifiably have concluded that the five lateness factors listed in 10 CFR § 2.714(a)(1) favored the denial of the untimely intervention petition. An Appeal Board must be persuaded that a reasonable mind could reach no other result. Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1171 (1983).

2.9.3.3.5 Mootness of Petitions to Intervene

Where the Commission was in the process of ruling on an untimely petition to intervene, when the applicant moved to amend its application and conclude the proceeding, the petition to intervene was dismissed as moot. Puget Sound Power and Light Company (Skagit Nuclear Power Project, Units 1 and 2), CLI-80-34, 12 NRC 407, 408 (1980).

2.9.3.4 Amendment of Petition Expanding Scope of Intervention

In order to expand the scope of a previously filed petition to intervene, an intervenor carries the burden of persuading the Licensing Board that the information upon which the expansion is based: (a) was objectively unavailable at the time the original petition was filed, and (b) had it been available, the petition's scope would have been broader. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), LBP-73-31, 6 AEC 717, appeal dismissed as interlocutory, ALAB-168, 6 AEC 1155 (1973).

2.9.3.5 Withdrawal of Petition to Intervene

Voluntary withdrawal of a petition to intervene is without prejudice to reinstate the petition, although reinstatement can only be done on a showing of good cause. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), LBP-73-41, 6 AEC 1057 (1973).

Where only a single intervenor is party to an operating license proceeding, its withdrawal serves to bring the proceeding to an end. Where there is more than one intervenor in a case, the withdrawal of one does not terminate the proceeding. However, according to NRC procedure, it does serve to eliminate the withdrawing party's contentions from litigation. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 382 (1985). Acceptance of contentions at the threshold stage of a licensing proceeding does not validate them as cognizable issues for litigation independent of their sponsoring intervenor. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-36, 14 NRC 1111, 1113-14 (1981); South Texas, supra, 21 NRC at 383.

Safety or environmental matters which may be left as outstanding issues by a withdrawing intervenor may be raised by a Board sua sponte or be subject to nonadjudicatory resolution by the NRC Staff. South Texas, supra, 21 NRC at 383 n.100. See Consolidated Edison Co. of New York (Indian Point, Units 1, 2, and 3), ALAB-319, 3 NRC 188, 189-90 (1976).

The test that should be applied to determine whether one intervenor may be permitted to adopt contentions that no longer have a sponsor when the sponsoring intervenor withdraws from the proceeding, is the five-factor test ordinarily used to determine whether to grant a non-timely request for intervention, or to permit the introduction of additional contentions by an existing intervenor after the filing date. South Texas, supra,

21 NRC at 381-82. See 10 CFR §§ 2.714(a)(1),(b). For a detailed discussion of the five-factor, test, see Sections 2.9.3.3 and 2.9.5.5.

2.9.3.6 Intervention in Antitrust Proceedings

In addition to meeting the requirements of 10 CFR § 2.714, a petitioner seeking to intervene in an antitrust proceeding must:

- (1) describe the situation allegedly inconsistent with the antitrust laws which is the basis for intervention;
- (2) describe how that situation conflicts with the policies underlying the Sherman, Clayton or Federal Trade Commission Acts;
- (3) describe how that situation would be created or maintained by activities under the proposed license;
- (4) identify the relief sought; and
- (5) explain why the relief sought fails to be satisfied by license conditions proposed by the Department of Justice.

Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-81-1, 13 NRC 27, 32 (1981) (and cases cited therein). Note that for antitrust intervention, Catawba implies that the interest of a ratepayer or consumer of electricity may be within the zone of interests protected by Section 105 of the Atomic Energy Act. The petitioner, however, must still demonstrate that an injury to its interests would be the proximate result of anticompetitive activities by the applicant or licensee and such injury must be more than remote and tenuous. Id. at 13 NRC 30-32.

The Commission's regulations make clear that an antitrust intervention petition: (1) must first describe a situation inconsistent with the antitrust laws; (2) would be deficient if it consists of a description of a situation inconsistent with the antitrust laws - however well pleaded - accompanied by a mere paraphrase of the statutory language alleging that the situation described therein would be created or maintained by the activities under the license; and (3) must identify the specific relief sought and whether, how and the extent to which the request fails to be satisfied by the license conditions proposed by the Attorney General. The most critical requirement of an antitrust intervention petition is an explanation of how the activities under the license would create or maintain an anticompetitive situation.

Florida Power and Light Co. (St. Lucie Plant, Unit No. 2), ALAB-665, 15 NRC 22, 29 (1982), citing, Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 NRC 559, 574-575 (1975) and Louisiana Power and Light Co. (Waterford Steam Electric Generating Station, Unit 3), CLI-73-25, 6 AEC 619, 621 (1973).

When neither the Attorney General nor the NRC Staff has discerned antitrust problems warranting review under Section 105c, potential antitrust problems must be shown with reasonable clarity to justify granting a petition that would lead to protracted antitrust litigation involving a pro se petitioner. Detroit Edison Co. (Enrico Fermi Atomic Plant, Unit 2), LBP-78-13, 7 NRC 583, 595 (1978).

Although Section 105 of the Atomic Energy Act encourages petitioners to voice their antitrust claims early in the licensing process, reasonable late requests for antitrust review are not precluded so long as they are made concurrent with licensing. Licensing Boards must have discretion to consider individual claims in a way which does justice to all of the policies which underlie Section 105c and the strength of particular claims justifying late intervention. Florida Power & Light Co. (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 946 (1978).

Late requests for antitrust review hearings may be entertained in the period between the filing of an application for a construction permit -- the time when the advice of the Attorney General is sought -- and its issuance. However, as the time for issuance of the construction permit draws closer, Licensing Boards should scrutinize more closely and carefully the petitioner's claims of good cause. Florida Power & Light Co. (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 946 (1978). The criteria of 10 CFR § 2.714 for late petitioners are as appropriate for evaluation of late antitrust petitions as in health, safety and environmental licensing, but Section 2.714 criteria should be more stringently applied to late antitrust petitions, particularly in assessing the good cause factor, Id. Where an antitrust petition is so late that relief will divert from the licensee needed and difficult-to-replace power, the Licensing Board may shape any relief granted to meet this problem. Id.

Where a late petition for intervention in an antitrust proceeding is involved, the special factors set forth within 10 CFR § 2.714(a)(1) must be balanced and applied before petitions may be granted; the test becomes increasingly vigorous as time passes. Florida Power and Light Co. (St. Lucie Plant, Unit 2), LBP-81-28, 14 NRC 333, 338, 342 (1981).

2.9.4 Interest and Standing for Intervention

Assertions of broad public interest in (a) regulatory matters, (b) the administrative process, and (c) the development of economical energy resources do not establish the particularized interest necessary for participation by an individual or group in NRC adjudicatory processes. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983).

Economic interest as a ratepayer does not confer standing in NRC licensing proceedings. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 n.4 (1983).

In Commission practice, a "generalized grievance" shared in substantially equal measure by all or a large class of citizens will not result in a distinct and palpable harm sufficient to support standing. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 333 (1983), citing, Transnuclear Inc., CLI-77-24, 6 NRC 525, 531 (1977).

Both the Atomic Energy Act of 1954, as amended, and the Commission's regulations permit intervention only by a "person whose interest may be affected." The term "person" in this context includes corporate environmental groups which may represent members of the group provided that such members have an interest which will be affected. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-322, 3 NRC 328 (1976). Standing to intervene as a matter of right does not hinge upon a petitioner's potential contribution to the decisionmaking process. Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-342, 4 NRC 98 (1976). Nevertheless, a petitioner's potential contribution has a definite bearing on "discretionary intervention." See Section 2.9.4.2. infra.

In Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), ALAB-333, 3 NRC 804 (1976), the Appeal Board certified the following questions to the Commission:

- (1) Should standing in NRC proceedings be governed by "judicial" standards?
- (2) If no "right" to intervene exists under whatever standing rules are found to be applicable, what degree of discretion exists in a Board to admit a petitioner anyway?

The Commission's response to the certified question is contained in Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610 (1976). Therein, the Commission ruled that judicial concepts of standing should be applied by adjudicatory boards in determining whether a petitioner is entitled to intervene as of right under Section 189 of the Atomic Energy Act. As to the second question referred by the Appeal Board, the Commission held that Licensing Boards may, as a matter of discretion, grant intervention in domestic licensing cases to petitioners who are not entitled to intervene as of right under judicial standing doctrines but who may, nevertheless, make some contribution to the proceeding.

Standing to intervene, unlike the factual merits of contentions, may appropriately be the subject of an evidentiary inquiry before intervention is granted. Consumers Power Co. (Midland Plant, Units 1 & 2), LBP-78-27, 8 NRC 275, 277 n.1 (1978).

"There is no question that, in an operating license proceeding, the question of a potential intervenor's standing is a significant one. For if no petitioner for intervention can satisfactorily demonstrate standing, it is likely that no hearing will be held." Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 582 (1978).

2.9.4.1 Judicial Standing to Intervene

The Commission has held that contemporaneous judicial concepts should be used to determine whether a petitioner has standing to intervene. Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), LBP-83-45, 18 NRC 213, 215 (1983), citing, Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976).

Judicial concepts of standing will be applied in determining whether a petitioner has sufficient interest in a proceeding to be entitled to intervene as a matter of right under Section 189 of the Atomic Energy Act of 1954. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983), citing, Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976).

Judicial concepts of standing require a showing that (a) the action sought in a proceeding will cause "injury-in-fact," and (b) the injury is arguably within the "zone of interests" protected by statutes governing the proceeding.

Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983).

Where a petitioner does not satisfy the judicial standards for standing, intervention could still be allowed as a matter of discretion. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 333 (1983).

2.9.4.1.1 "Injury-In-Fact" and "Zone of Interest" Tests for Standing to Intervene

Although the Commission's Pebble Springs ruling (CLI-76-27, 4 NRC 610) permits discretionary intervention in certain limited circumstances, it stresses that, as a general rule, the propriety of intervention is to be examined in the light of judicial standing principles. The judicial principles referred to are those set forth in Sierra Club v. Morton, 405 U.S. 727 (1972); Barlow v. Collins, 397 U.S. 159 (1970); and Association of Data Processing Service Organizations v. Camp, 397 U.S. 150 (1970). Such standards require a showing that (1) the action being challenged could cause injury-in-fact to the person seeking to establish standing, and (2) such injury is arguably within the zone of interests protected by the statute governing the proceeding. Consumers Power Co. (Palisades Nuclear Power Facility), LBP-81-26, 14 NRC 247, 250 (1981), citing, Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438 (1980); Wisconsin Electric Power Co. (Point Beach, Unit 1), CLI-80-38, 12 NRC 547 (1980); Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976); Nuclear Fuel Services, Inc. and N.Y. State Energy Research and Development Authority (Western New York Nuclear Service Center), LBP-82-36, 15 NRC 1075, 1083 (1982); Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1431, 1432 (1982), citing, Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 612-13 (1976); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 316 (1985).

Purely academic interests are not encompassed by 10 CFR § 2.714(a) which states that any person whose interest is affected by a proceeding shall file a written petition for leave to intervene. Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1), LBP-82-52, 16 NRC 183, 185 (1982). See generally, CLI-81-25, 14 NRC 616 (1981), (guidelines for Board).

Two tests must be satisfied to acquire standing: (1) petitioner must allege "injury-in-fact" (that some injury has occurred or will probably result from the action involved); (2) petitioner must allege an interest "arguably within the zone of interest" protected by the statute. Puget Sound Power and Light Co. (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 983 (1982), citing Warth v. Selden, 422 U.S. 490 (1975); Sierra Club v. Morton, 405 U.S. 727 (1972); Consumers Power Co. (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 113 (1979); Duquesne Light Co. (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 428 (1984).

A petitioner must allege an "injury-in-fact" which must be within the "zone of interests" protected by the Atomic Energy Act or the National Environmental Policy Act of 1969. Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), LBP-83-45, 18 NRC 213, 215 (1983).

With respect to "zone of interest," the Appeal Board, in Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-342, 4 NRC 98, 103 n.6 (1976), rejected the contention that the Atomic Energy Act includes a "party aggrieved" provision which would require for standing purposes simply a showing of injury-in-fact. The Commission agreed with this analysis in its Pebble Springs decision. As such, zone of interest requirements are not met simply by invoking the Atomic Energy Act but must be satisfied by other means. The following should be noted with regard to "zone of interest" requirements:

- (1) The directness of a petitioner's connection with a facility bears upon the sufficiency of its allegations of injury-in-fact, but not upon whether its interests fall within the zone of interest which Congress was protecting or regulating. Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-342, 4 NRC 98 (1976).
- (2) The Atomic Energy Act and its implementing regulations do not confer standing but rather require an additional showing that interests sought to be protected arguably fall within the zone of interests protected or regulated by the Act. Virginia Electric & Power Co., ALAB-342 *supra*; accord, Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610 (1976).
- (3) While potential loss of business reputation is a cognizable "injury-in-fact," an interest in protecting business reputation and avoiding possible damage claims is not arguably within the zone of interest

which the Act seeks to protect or regulate. Virginia Electric & Power Co., ALAB-342, supra (business reputation of reactor vessel component fabricator clearly would be injured if components failed during operation; however, fabricator's interest in protecting his reputation by intervening in hearing on adequacy of vessel supports was not within the zone of interests sought to be protected by the Atomic Energy Act).

- (4) The economic interest of a ratepayer is not sufficient to allow standing to intervene as a matter of right since concern about rates is not within the scope of interests sought to be protected by the Atomic Energy Act. Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 128 (1977); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1420-1421 (1977); Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB-376, 5 NRC 426 (1977); Public Service Co. of Oklahoma (Black Fox Nuclear Power Station, Units 1 & 2), LBP-77-17; 5 NRC 657 (1977). Nor is such interest within the zone of interests protected by the National Environmental Policy Act. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 & 2), ALAB-333, 3 NRC 804 (1976).
- (5) A person's interest as a taxpayer does not fall within the zone of interests sought to be protected by either the Atomic Energy Act or the National Environmental Policy Act. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1421 (1977).
- (6) Economic injury gives standing under the National Environmental Policy Act only if it is environmentally related. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1421 (1977). See also Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), ALAB-292, 2 NRC 631, 640 (1975).

The test is a cognizable interest that might be adversely affected by one or another outcome of the proceeding. No interest is to be presumed. There must be a concrete demonstration that harm could flow from a result of the proceeding. Nuclear Engineering Co., Inc. (Sheffield, 111. Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978).

An individual alleging that violation of constitutional provisions by governmental actions based on a statute will cause him identifiable injury should have standing

to challenge the constitutionality of those actions. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1445 (1982), citing, Chicano Police Officer's Association v. Stover, 526 F.2d 431, 436 (10th Cir. 1975), vacated and remanded on other grounds, 426 U.S. 994 (1976), holding on standing reaffirmed, 552 F.2d 918 (10th Cir. 1977); 3 K. Davis Administrative Law Treatise 22.08, at 240 (1958).

The courts have not resolved the issue of whether an individual who suffers economic injury as a result of a Board's decision to bar him from working in a certain job would be within the zone of interests protected by the Atomic Energy Act. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 316 (1985). See, e.g., (Consumers Power Co. (Palisades Nuclear Power Facility), ALAB-670, 15 NRC 493, 506 (1982) (concurring opinion of Mr. Rosenthal), vacated as moot, CLI-82-18, 16 NRC 50 (1982).

Allegations that a plant will cause radiologically contaminated food which a person may consume are too remote and too generalized to provide a basis for standing to intervene. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1449 (1982).

For antitrust purposes, the interest of a ratepayer or consumer of electricity is not necessarily beyond the zone of interests protected by Section 105 of the Atomic Energy Act. However, the petitioner must still demonstrate that an injury to its economic interests as a ratepayer would be the proximate result of anticompetitive activities by the licensee. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-13, 7 NRC 583, 592-593 (1978).

Antitrust considerations to one side, neither the Atomic Energy Act nor the National Environmental Policy Act includes in its "zone of interests" the purely economic personal concerns of a member/ratepayer of a cooperative that purchases power from a prospective facility co-owner. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 474-475 (1978). See also Puget Sound Power & Light Co. (Skagit/Hanford Nuclear Power Project Units 1 and 2), LBP-82-26, 15 NRC 742, 744 (1982).

General economic concerns are not within the proper scope of issues to be litigated before the boards. Concerns about a facility's impact on local utility rates, the local economy, or a utility's solvency, etc., do not provide an adequate basis for standing of an intervenor

or for the admission of an intervenor's contentions. Such economic concerns are more appropriately raised before state economic regulatory agencies. Public Service Co. of New Hampshire (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975, 978 (1984); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-789, 20 NRC 1443, 1447 (1984).

Nor is a union's admittedly economic interest in maintaining contractually protected employment rights an interest that is within the "zone of interests" protected by the Atomic Energy Act; it therefore cannot serve as a basis to request a hearing as a matter of right under Section 189a. Consumers Power Co. (Palisades Nuclear Power Facility), LBP-81-26, 14 NRC 247, 251 (1981).

For an amendment authorizing transfer of 20% of the ownership of a facility, allegations that a petitioner would "receive" only 80% of the electricity produced by the plant rather than the 100% "assumed in the 'NEPA balance'" were insufficient to give standing as a matter of right because it was an economic injury outside the zone of interests to be protected and the NEPA cost-benefit analysis considers the overall benefits to society rather than benefits to an isolated portion. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 390-90, aff'd, ALAB-470, 7 NRC 473 (1978).

The Commission applies judicial tests of "injury-in-fact" and "arguably within the zone of interest" to determine standing. "Injury" as a premise to standing must come from an action, in contrast to failure to take an action. One who claims that an Order in an enforcement action should have provided for more extensive relief does not show injury from relief granted and thus does not have standing to contest the order. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980).

A mere academic interest in the outcome of a proceeding will not confer standing. The petitioner must allege some injury that has or will occur from the action taken as a result of the proceeding. Skagit/Hanford, supra at 743.

To establish the requisite "injury-in-fact" for standing, a petitioner must have a "real stake" in the outcome, that is, a genuine, actual, or direct stake, but not necessarily a substantial stake in the outcome. An organization meets this requirement where it has identified one of its members who possesses the requisite standing. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-448 (1979).

A petitioner who supports an application must, of course, show the potential for injury-in-fact to its interests before intervention can be granted. Such a petitioner must particularize a specific injury that it or its members would or might sustain should the application it supports be denied or should the license it supports be burdened with conditions or restrictions. Nuclear Engineering Co., Inc. (Sheffield, Ill. Low-Level Radioactive Waste Disposal site), ALAB-473, 7 NRC 737, 743 (1978).

An alleged injury to health and safety, shared equally by all those residing near a reactor, can form the basis for standing. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1434 (1982).

A petitioner may base its standing upon a showing that his or her residence, or that of its members, is within the geographical zone that might be affected by an accidental release of fission products. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 443 (1979). See also Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 78 (1979). Close proximity has always been deemed enough standing alone, to establish the requisite interest" for intervention. In such a case the petitioner does not have to show that his concerns are well-founded in fact, as such concerns are addressed when the merits of the case are reached. Distances of as much as 50 miles have been held to fall within this zone. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979); Duquesne Light Co. (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 410, 429 (1984), citing, South Texas, supra, 9 NRC at 443-44; Enrico Fermi, supra, 9 NRC at 78; Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 n.4 (1977); Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728, 730 (1979).

An intervention petitioner who resides near a nuclear facility need not show a causal relationship between injury to its interest and the licensing action being sought in order to establish standing. Armed Forces Radiobiology Research Institute (Cobalt-60 Storage Facility), ALAB-682, 16 NRC 150, 153 (1982), citing, Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 57 n.5 (1979).

In a materials license renewal proceeding under 10 CFR Part 30, as in construction permit and operating license proceedings under 10 CFR Part 50, proximity to a large source of radioactive material is sufficient to establish the requisite interest for standing to intervene. Whether a petitioner's stated concern is in fact justified must be left for consideration when the merits of the controversy are reached. Armed Forces Radiobiology Research Institute (Cobalt-60 Storage Facility), ALAB-682, 16 NRC 150, 154 (1982). See generally, LBP-82-24, 15 NRC 652 (1982), (decision reversed regarding petitioner's request to intervene). However, postcards and letters from individuals allegedly living near nuclear fuel element manufacturing and fuel element decladding facilities which make only vague and generalized allusions to danger or potential injury from radiation do not constitute a proper intervention statement. Rockwell International Corp. (Energy Systems Group Special Materials License No. SNM-21), LBP-83-65, 18 NRC 774, 777 (1983).

Although residence within 50 miles is not an explicit requirement for intervention by right, that limit is consistent with precedent. Without a showing that a plant has a far greater than ordinary potential to injure outside a 50 mile limit, a person has a weak claim to the protection of a full adjudicatory proceeding; rule-making or lobbying Congress are available to protect public interests of a general nature. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 178-179 (1981).

Residence more than 75 miles from a plant will not alone establish an interest sufficient for standing as a matter of right. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1447 (1982), citing, Dairyland Power Cooperative (LaCrosse Boiling Water Reactor) ALAB-497, 8 NRC 312, 313 (1978); Public Service Co. of Oklahoma (Black Fox Units 1 and 2), ALA-397, 5 NRC 1143, 1150 (1977).

A statement of asserted injury which is insufficient to found a valid contention may well be adequate to provide a basis for standing. Consumers Power Company (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 115 (1979).

Failure to produce an environmental impact statement in circumstances where one is required has been held to constitute injury - indeed, irreparable injury. Palisades, supra, at 115-116. Persons residing within the close proximity to the locus of a proposed action constitute the very class which an impact statement is intended to benefit. Palisades, supra, at 116.

2.9.4.1.2 Standing of Organizations to Intervene

A party may intervene as of right only when he asserts his own interests under either the Atomic Energy Act or NEPA, and not when he asserts interests of third persons. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1421 (1977). Commission practice requires each party to separately establish standing. 10 CFR § 2.714. Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 623 (1981). An organization may meet the injury-in-fact test for standing in one of two ways. It may demonstrate an effect upon its organizational interest, or it may allege that its members, or any of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justifiable case had the members themselves brought suit. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 646 (1979); Consumers Power Company (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 112-113 (1979). Thus, a corporate environmental group has standing to intervene and represent members who have an interest which will be affected. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-322, 3 NRC 328 (1976). Note, however, that a member's mere "interest in the problem" without a showing that the member will be affected is insufficient to give the organization standing. Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420 (1976). An organization does not have independent standing to intervene in a licensing proceeding merely because it asserts an interest in the litigation. Puget Sound Power and Light Co. (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 983 (1982), citing, Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976). In this vein, for national environmental groups, standing is derived from injury-in-fact to individual members. South Texas, supra, 9 NRC at 647, citing, Sierra Club v. Morton 405 U.S. 727 (1972). However, an organization specifically empowered by its members to promote certain of their interests has those members' authorization to act as their representative in any proceeding that may affect those interests. Puget Sound Power and Light Co. (Skagit/Hanford Nuclear Power Project, Units 1 and 2), ALAB-700, 16 NRC 1329, 1334 (1982); see Hunt v. Washington Apple Advertising Commission, 432 U.S. 333, 342-345 (1977); Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-536, 9 NRC 402, 404 n.2 (1979); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 395-396 n.25 (1979).

There is a presumption of standing where an organization raises safety issues on behalf of a member or members residing in close proximity to a plant. Consumers Power Company (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 115 (1979).

For a case holding that a petitioner cannot assert the rights of third parties as a basis for intervention, see Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 387, aff'd, ALAB-470, 7 NRC 473 (1978) (mother attempted to assert the rights of her son who attended medical school near a proposed facility).

"[I]t is clear that an organization may establish its standing through the interest of its members; but, to do so, it must identify specifically the name and address of at least one affected member who wishes to be represented by the organization." Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 583 (1978).

Where an organization is to be represented in an NRC proceeding by one of its members, the member must demonstrate authorization by that organization to represent it. Fermi, supra, 8 NRC at 583.

If an official of an organization has the requisite personal interests to support an intervention petition, her signature on the organization's petition for intervention is enough to give the organization standing to intervene. However the organization is not always necessarily required to produce an affidavit from a member or sponsor authorizing it to represent that member or sponsor. The organization may be presumed to represent the interests of those of its members or sponsors in the vicinity of the facility. (Where an organization has no members, its sponsors can be considered the equivalent to members where they financially support the organization's objectives and have indicated a desire to be represented by the organization). Consolidated Edison Co. of N.Y. (Indian Point, Unit No. 2) and Power Authority of the State of N.Y. (Indian Point, Unit No. 3), LBP-82-25, 15 NRC 715, 728-729, 734-736 (1982).

To establish the requisite "injury-in-fact" for standing, a petitioner must have a "real stake" in the outcome, a genuine, actual, or direct stake, but not necessarily a substantial stake in the outcome. An organization meets this requirement where it has identified one of its members who possesses the requisite standing. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-448 (1979).

An organization seeking to obtain standing in a representative capacity must demonstrate that a member has in fact authorized such representation. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 444 (1979), aff'd, ALAB-549, 9 NRC 644 (1979); Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 77 (1979); Consumers Power Company (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 113 (1979). Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit No. 1), LBP-82-52, 16 NRC 183, 185 (1982), citing, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377 (1979); see generally, CLI-81-25, 14 NRC 616 (1981), (Guidelines for Board). Cincinnati Gas and Electric Co. (Zimmer Nuclear Power Station, Unit 1), LBP-82-54, 16 NRC 210, 216 (1982), citing, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377 (1979); Duquesne Light Co. (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 411 (1984). Where the affidavit of the member is devoid of any statement that he wants the organization to represent his interests, it is unwarranted for the Licensing Board to infer such authorization, particularly where the opportunity was offered to revise the document and was ignored. Beaver Valley, supra, 19 NRC at 411.

To have standing, an organization must show injury either to its organizational interests or to the interests of members who have authorized it to act for them. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1437 (1982), citing, Warth v. Seldin, 422 U.S. 490, 511 (1975); Sierra Club v. Morton, 405 U.S. 727, 739-740 (1972); Consumers Power Co. (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 113 (1979).

An organization depending upon injury to the interests of its members to establish standing, must provide with its petition identification of at least one member who will be injured, a description of the nature of that injury, and an authorization for the organization to represent that individual in the proceeding. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1437 (1982), citing, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390-96 (1976).

Absent express authorization, an organization which is a party to an NRC proceeding may not represent persons other than its own members. Since there are no Commission regulations allowing parties to participate as private attorneys general, an organization acting as an intervenor may not claim to represent the public interest in general

in addition to representing the specialized interests of its members. In this vein, a trade association of home heating oil dealers cannot be deemed to represent the interests of employees and customers of the dealers. Similarly, an organization of residents living near a proposed plant site cannot be deemed to represent the interests of other residents who are not members. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-77-11, 5 NRC 481 (1977); Puget Sound Power and Light Co. (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 984 (1982), citing, Shoreham, supra, at 5 NRC 481, 483.

An organization must, in itself, and through its own membership, fulfill the requirements for standing. Skagit/Hanford, supra, at 16 NRC 984, citing, Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976).

An organization has sufficiently demonstrated its standing to intervene if its petition is signed by a ranking official of the organization who himself has the requisite personal interest to support the intervention. An organization seeking intervention need not demonstrate that its membership had voted to seek intervention on the matter raised by a submitted contention, and had authorized the author of the intervention petition to represent the organization. Duke Power Company (Amendment to Materials License SNM-1773 -- Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979).

An organization cannot meet the "interest" requirement for standing by acquiring a new member considerably after the deadline for filing of intervention petitions who meets the "interest" requirement, but who has not established good cause for the out-of-time filing. Washington Public Power Supply System (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 335 (1979). The organization cannot in this situation amend its original pleading to show the interest of the new member; the Licensing Board has interpreted 10 CFR § 2.714(a)(3) to permit amendment of a petition relative to interest only by those individuals who have made a timely filing and are merely particularizing how their interests may be affected. WPPSS, supra, at 336.

Where the petitioner organization's membership solicitation brochure demonstrates that the organization's sole purpose is to oppose nuclear power in general and the construction and operation of nuclear plants in the northwest in particular, mere membership by a person with geographic standing to intervene, without specific

representational authority, is sufficient to confer standing. Washington Public Power Supply System (WPPSS Nuclear Project No. 1), LBP-83-16, 17 NRC 479, 482 (1983).

A petitioner organization cannot amend its petition to satisfy the timeliness requirements for filing without leave of the Board to include an affidavit executed by someone who became a member after the due date for filing timely petition. WPPSS, supra, 17 NRC at 483.

It is not necessary for the individual on whom organizational standing is based to be conversant with, and able to defend, each and every contention raised by the organization in pursuing his interest. Litigation strategy and the technical details of the complex prosecution of a nuclear power intervention are best left to the resources of the organizational petitioners. WPPSS, supra, 17 NRC at 485.

2.9.4.1.3 Standing to Intervene in Export Licensing Cases

In Edlow International Co., CLI-76-6, 3 NRC 563 (1976), the Commission dealt with the question as to whether the Natural Resources Defense Council and the Sierra Club could intervene as of right and demand a hearing in an export licensing case. The case involved the export of fuel to India for the Tarapur project. The petitioners contended that at least one member of the Sierra Club and several members of NRDC lived in India and thus would be subject to any hazards created by the reactor.

In rejecting the argument that there was a right to intervene, the Commission stated:

If petitioners allege a concrete and direct injury their claim of standing is not impaired merely because similar harm is suffered by many others. However, if petitioners' asserted harm is a "generalized grievance" shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction'. 3 NRC at 576.

The Commission held that the alleged interests were de minimis (3 NRC at 575), noting that, while in domestic licensing cases claims of risk that were somewhat remote have been recognized as forming a basis for intervention, Section 189(a) of the Act (42 U.S.C. § 2239(a)) would not be given such a broadly permissive reading (3 NRC at 571) in export licensing cases.

Consistent with its decision in Edlow International Co., CLI-76-6, 3 NRC 563 (1976), the Commission has held that a petitioner is not entitled to intervene as a matter of right where its petition raises abstract issues relating to the conduct of U.S. foreign policy and protection of the national security. The petitioner must establish that it will be injured and that the injury is not a generalized grievance shared in substantially equal measure by all or a large class of citizens. In the Matter of Ten Applications, CLI-77-24, 6 NRC 525, 531 (1977). Nevertheless, the Commission may, in its discretion, direct further public proceedings if it determines that such proceedings would be in the public interest even though the petitioner has not established a right under Section 189 of the Atomic Energy Act to intervene or demand a public hearing. Id. at 532.

The contention that a major Federal action would have a significant environmental impact on a foreign nation is not cognizable under NEPA, and cannot support intervention. Babcock & Wilcox (Application for Considerations of Facility Export License), CLI-77-18, 5 NRC 1332, 1348 (1977).

Judicial precedents will be relied on in deciding issues of standing to intervene in export licensing. Westinghouse Electric Corp. (Export to South Korea), CLI-80-30, 12 NRC 253, 258 (1980).

Institutional interests in disseminating information and educating the public do not establish a claim of right under Section 189a of the Atomic Energy Act for purposes of standing because it would not constitute an interest affected by the proceeding. There must be a causal nexus between the refusal to allow standing and the inability to disseminate information Id. at 259.

2.9.4.1.4 Standing to Intervene in Specific Factual Situations

Residence within 30-40 miles of the plant site has been held to be sufficient to show the requisite interest in raising safety questions. Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-146, 6 AEC 631, 633-634 (1973); Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372, n.6 (1973); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188, 190, 193, reconsid. den., ALAB-110, 6 AEC 247, aff'd, CLI-73-12, 6 AEC 241 (1973). Similarly, a person whose base of normal, everyday activities is within 25 miles of a nuclear facility can fairly be presumed to have an interest which might be affected by reactor construction and/or operation. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-183, 7 AEC 222, 226 (1974). Moreover, persons who allege

that they use an area whose recreational benefits may be diminished by a nuclear facility have been found to possess an adequate interest to allow intervention. Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-73-10, 6 AEC 173 (1973). On the other hand, it is proper for a Board to dismiss an intervention petition where the intervenor changes residence to an area not in the proximity of the reactor and totally fails to assume any significant participatory role in the proceeding. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-358, 4 NRC 558 (1976).

A petitioner who resides far from a facility cannot acquire standing to intervene by asserting the interests of a third party who will be near the facility but who is not a minor or otherwise under a legal disability which would preclude his own participation. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 474 at n.1 (1978).

"A petitioner may base its standing upon a showing that his or her residence, or that of its members, is 'within the geographical zone that might be affected by an accidental release of fission products.' Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 371 n.6 (1973)." Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 78 (1979). Distances of as much as 50 miles have been held to fall within this zone. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 n.4 (1977) (50 miles); Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 193 (1973) (40 miles); Fermi, supra (35 miles).

The Licensing Board refused to allow intervention on the basis of the possibility of petitioners' consuming produce, meat products, or fish originating within 50 miles of the site. Washington Public Power Supply System (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 336 (1979).

A petitioner owning and renting out farmland 10 to 15 miles from the site and visiting the farm occasionally was held not to meet standing requirements. WPPSS, supra, 9 NRC at 336-338.

One living 26 miles from a plant cannot claim, without more, that his aesthetic interests are harmed. Conjectural interests do not provide a basis for standing. Nor does economic harm or one's status as a ratepayer provide a basis for standing. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 242, 243 n.8 (1980).

The fact that the petitioner is an intervenor with respect to the same issue in another proceeding does not give him standing to intervene for the purpose of protecting himself from adverse precedent in the proceeding in question. Consolidated Edison Co. of N.Y., Inc. (Indian Point Nuclear Power Station, Units 1, 2 & 3), ALAB-304, 3 NRC 1, 4 (1976).

Where a license amendment grants a co-licensee precisely the relief which the co-licensee seeks as a party to a pending proceeding, the co-licensee loses its standing to assert its claim in the proceeding. Nuclear Fuel Services and New York State Energy Research and Development Authority (Western New York Nuclear Service Center), LBP-82-36, 15 NRC 1075, 1083 (1982).

For the views of various Appeal Board members on whether a petitioner has the requisite interest where he has an economic interest which competes with nuclear power in generating electricity, see the three opinions in Long Island Lighting Co. (Jamesport Nuclear Power Station), ALAB-292, 2 NRC 631 (1975).

A petitioner who supports an application must, of course, show the potential for injury-in-fact to its interests before intervention can be granted. Such a petitioner must particularize a specific injury that it or its members would or might sustain should the application it supports be denied or should the license it supports be burdened with conditions or restrictions. Nuclear Engineering Co., Inc. (Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978).

In a license amendment proceeding to allow two electric cooperatives to become co-owners of a nuclear plant, interests of a petitioner which stemmed from membership in the cooperative ("loss of equity," "threat of bankruptcy," "higher rates," "cost of replacement power," or "loss of property taxes") were insufficient to support standing as a matter of right. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 386, aff'd, ALAB-470, 7 NRC 473 (1978).

Those persons who would have standing to intervene in new construction permit hearings, which would be required if good cause could not be shown for an extension of an existing construction permit, would have standing to intervene in [extension proceedings] to show that no good cause existed and, consequently, that new construction permit hearings would be required to complete construction. Northern Indiana Public Service Company

(Bailly Generating Station, Nuclear-1), LBP-80-22, 12 NRC 191, 195, affirmed, ALAB-619, 12 NRC 558, 563-565 (1980).

Economic injury to ratepayers is not sufficient to confer standing upon State Commissions to challenge proposed license revocation because such injury results from termination of the project and not Commission "action," and because such injury cannot be redressed by favorable Commission action. Northern States Power Company (Tyrone Energy Park, Unit 1), CLI-80-36, 12 NRC 523, 526-527 (1980) (views of Chairman Ahearn and Commissioner Hendrie).

A statement of asserted injury which is insufficient to found a valid contention may well be adequate to provide a basis for standing. Consumers Power Company (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 115 (1979). Failure to produce an environmental impact statement in circumstances where one is required has been held to constitute injury - indeed, irreparable injury. Palisades, supra, at 115-116. Persons residing within the close proximity to the locus of a proposed action constitute the very class which an impact statement is intended to benefit, Palisades, supra, at 116.

2.9.4.2 Discretionary Intervention

Although a petitioner may lack standing to intervene as of right under judicial standing concepts, he may nevertheless be admitted to the proceeding in the Licensing Board's discretion. In determining whether discretionary intervention should be permitted, the Commission has indicated that the Licensing Board should be guided by the following factors, among others:

(a) Weighing in favor of allowing intervention --

- (1) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
- (3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

(b) Weighing against allowing intervention --

- (4) The availability of other means whereby petitioner's interest will be protected.

- (5) The extent to which the petitioner's interest will be represented by existing parties.
- (6) The extent to which petitioner's participation will inappropriately broaden or delay the proceeding.

Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610, 616 (1976). See also Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 623 (1981). Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1435 (1982). The discretionary intervention doctrine comes into play only in circumstances where standing to intervene as a matter of right has not been established. Duke Power Company (Oconee Nuclear Station and McGuire Nuclear Station), ALAB-528, 9 NRC 146, 148 n.3 (1979).

The primary factor to be considered is the significance of the contribution that a petitioner might make. Pebble Springs, supra. Thus, foremost among the factors listed above is whether the intervention would likely produce a valuable contribution to the NRC's decisionmaking process on a significant safety or environmental issue appropriately addressed in the proceeding in question. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418 (1977). See also Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 475 at n.2 (1978). The need for a strong showing as to potential contribution is especially pressing in an operating license proceeding where no petitioners have established standing as of right and where, absent such a showing, no hearing would be held. Watts Bar, supra, at 5 NRC 1422.

For a case in which the Commission's discretionary intervention rule was applied, see Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-363, 4 NRC 631 (1976), where, despite petitioner's lack of judicial standing, intervention was permitted based upon petitioner's demonstration of the potential significant contribution it could make on substantial issues of law and fact not otherwise raised or presented and a showing of the importance and immediacy of those issues.

For discretionary intervention, the burden of convincing the Licensing Board that a petitioner could make a valuable contribution lies with the petitioner. Nuclear Engineering Co., Inc. (Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 745 (1978). Considerations in determining the petitioner's ability to contribute to development of a sound record include:

- (1) a petitioner's showing of significant ability to contribute on substantial issues of law or fact which will not be otherwise properly raised or presented;
- (2) the specificity of such ability to contribute on those substantial issues of law or fact;
- (3) justification of time spent on considering the substantial issues of law or fact;
- (4) provision of additional testimony, particular expertise, or expert assistance;
- (5) specialized education or pertinent experience.

Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-81-1, 13 NRC 27, 33 (1981) (and cases cited therein). Where a petitioner failed to respond to a Licensing Board order seeking clarification following presentation of evidence casting shadow on his purported qualifications, the Board was entitled to conclude that a petitioner would not help to create a sound record, and that the veracity of his other statements were suspect, leading to denial of his petition. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 457-458 (1979).

As to the second and third factors to be considered with regard to discretionary intervention (the nature and extent of property, financial or other interests in the proceeding and the possible effect any order might have on the petitioner's interest), interests which do not establish a right to intervention because they are not within the "zone of interests" to be protected by the Commission should not be considered as positive factors for the purposes of granting discretionary intervention. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 388, aff'd, ALAB-470, 7 NRC 473 (1978).

The Commission has broad discretion to allow intervention where it is not a matter of right. Such intervention will not be granted where conditions have already been imposed on a licensee, and no useful purpose will be served by that intervention. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), CL1-80-10, 11 NRC 438, 442 (1980).

2.9.5 Contentions of Intervenors

Contentions constitute the method by which the parties to a licensing proceeding frame issues under NRC practice,

similar to the use of pleadings in their judicial counterparts. Such contentions may be amended or refined as a result of additional information gained by discovery. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-81-25, 14 NRC 241, 243 (1981).

The basis for a contention may not be undercut, and the contention thereby excluded, through an attack on the credibility of the expert who provided the basis for the contention. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-98, 16 NRC 1459, 1466 (1982), citing, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980).

The admission of a contention does not require anticipation of the contents of a document that has not been filed. A contention may address any current deficiency of the application, providing the contention is specific. Perry, supra, 16 NRC at 1469.

The Commission could not have intended that prior to admitting a contention advocating a safety measure, the Board should have found that a significant risk surely existed without such a safety measure. Such a finding should reflect the outcome of that litigation rather than its starting point. Consolidated Edison Co. of N.Y. (Indian Point, Unit 3) and Power Authority of the State of N.Y. (Indian Point, Unit 3), LBP-82-105, 16 NRC 1629, 1634 (1982).

A contention about a matter not covered by a specific rule need only allege that the matter poses a significant safety problem. That would be enough to raise an issue under the general requirement for operating licenses [10 CFR § 50.57(a)(3)] for finding of reasonable assurance of operation without endangering the health and safety of the public. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1946 (1982).

An intervenor's failure to particularize certain contentions or even, arguendo, to pursue settlement negotiations, when taken by itself, does not warrant the out-of-hand dismissal of intervenors' proposed contentions. There is a sharp contrast between an intervenor's refusal to provide information requested by another party on discovery, even after a Licensing Board order compelling its disclosure, and the asserted failure of intervenors to take advantage of additional opportunity to narrow and particularize their contentions. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-75, 16 NRC 986, 990 (1982).

Pursuant to 10 CFR § 2.707, the Licensing Board is empowered, on the failure of a party to comply with any prehearing conference order, "to make such orders in regard to the failure as are just." The just result, where intervenors have not fully availed themselves of an opportunity to further particularize their contentions, is to simply rule on intervenors' contentions as they stand, dismissing those proposed contentions which lack adequate bases and specificity. Shoreham, supra, 16 NRC at 990; Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-804, 21 NRC 587, 592 (1985).

The Licensing Board may limit the time for the filing of contentions to less than that normally allotted by the rules, 10 CFR § 2.714(a)(3) and (b), so that all participants know before they arrive at the special prehearing conference, what position the proponents of the plant are taking on the various contentions. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521, 523 (1979). See also General Electric Co. (GETR Vallecitos), LBP-83-19, 17 NRC 573, 578 (1983) and Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7, 12-13 (1980).

Commission regulations direct that contentions be filed in advance of a prehearing conference. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-737, 18 NRC 168, 172 n.4 (1983), citing, 10 CFR § 2.714(b).

A Licensing Board should not address the merits of a contention when determining its admissibility. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1654 (1982), citing, Allens Creek, supra, 11 NRC at 542; Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-1, 19 NRC 29, 34 (1984); Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 617 (1985). See Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-84-20, 19 NRC 1285, 1292 (1984), citing, Allens Creek, supra, 11 NRC 542; Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 216 (1974), rev'd on other grounds, CLI-74-12, 7 AEC 203 (1974); and Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 244-45 (1973). What is required is that an intervenor state the reasons for its concern. Seabrook, supra, citing, Allens Creek, supra.

Relevance is not the only criterion for admissibility of a contention. 10 CFR § 2.714 requires that the bases for each contention must be set forth with reasonable

specificity. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), LBP-82-108, 16 NRC 1811, 1821 (1982). See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 181-84, (1981); Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 617, 627 (1985). A long and detailed list of omissions and problems does not, without more, provide a basis for believing that there is a safety issue. Discovered problems are not in themselves grounds for admitting a contention. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-75A, 18 NRC 1260, 1263 n.6 (1983).

Neither the Commission's Rules of Practice nor the pertinent statement of consideration puts an absolute or relative limit on the number of contentions that may be admitted to a licensing proceeding. See 10 CFR § 2.714(a), (b); 43 Fed. Reg. 17798, 17799 (April 26, 1978). Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-706, 16 NRC 1754, 1757 (1982).

Pro se intervenors are not held in NRC proceedings to a high degree of technical compliance with legal requirements and, accordingly, as long as parties are sufficiently put on notice as to what has to be defended against or opposed, specificity requirements will generally be considered satisfied. However, that is not to suggest that a sound basis for each contention is not required to assure that the proposed issues are proper for adjudication. Consolidated Edison Co. of N.Y. (Indian Point, Unit 2) and Power Authority of the State of N.Y. (Indian Point, Unit 3), LBP-83-5, 17 NRC 134, 136 (1983).

Agency procedural requirements simply raising the threshold for admitting some contentions as an incidental effect of regulations designed to prevent unnecessary delay in the hearing process are reasonable. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1047 (1983).

Should the subsequent issuance of the SER lead to a change in the FSAR and thereby modify or moot a contention based on that document, that contention can be amended or promptly disposed of by summary disposition or a stipulation. However, the possibility that such a circumstance could occur does not provide a reasonable basis for deferring the filing of safety-related contentions until the Staff issues its SER. Catawba, supra, 17 NRC at 1049.

NRC has the burden of complying with NEPA. The adequacy of the NRC's environmental review as reflected in the adequacy of a DES or FES is an appropriate issue for

litigation in a licensing proceeding. Because the adequacy of those documents cannot be determined before they are prepared, contentions regarding their adequacy cannot be expected to be proffered at an earlier stage of the proceeding before the documents are available. That does not mean that no environmental contentions can be formulated before the Staff issues a DES or FES. While all environmental contentions may, in a general sense, ultimately be challenges to the NRC's compliance with NEPA, factual aspects of particular issues can be raised before the DES is prepared. Just as the submission of a safety-related contention based on the FSAR is not to be deferred simply because the Staff may later issue an SER requiring a change in a safety matter, so too, the Commission expects that the filing of an environmental concern based on the applicant's environmental report will not be deferred simply because the Staff may subsequently provide a different analysis in its DES. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1049 (1983).

When information is not available, there will be good cause for filing a contention based on that information promptly after the information becomes available. However, the five late-filing factors must be balanced in determining whether to admit such a contention filed after the initial period for submitting contentions. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-83-39, 18 NRC 67, 69 (1983).

2.9.5.1 Pleading Requirements for Contentions

In BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974), the U.S. Court of Appeals for the D.C. Circuit upheld, in part, the pleading requirements of 10 CFR § 2.714 governing petitions to intervene. Specifically, the Court ruled that:

- (a) the requirement that contentions be specified does not violate Section 189(a) of the Act; and
- (b) the requirement for a basis for contentions is valid.

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-75, 16 NRC 986, 993 (1982), citing, BPI v. Atomic Energy Commission, 502 F.2d 424, 428-429 (D.C. Cir. 1974); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-804, 21 NRC 587, 591 n.5 (1985).

An intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable the petitioner to uncover any information

that could serve as the foundation for a specific contention. Neither Section 189a of the Atomic Energy Act nor Section 2.714 of the Rules of Practice permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or Staff. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 468 (1982), vacated in part on other grounds, CLI-83-19, 17 NRC 1041 (1983); Duquesne Light Co. (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 412 (1984), citing, Catawba, supra, 16 NRC at 468.

Nor is a Licensing Board authorized to admit conditionally, for any reason, a contention that falls short of meeting the specificity requirements. Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 635 (1985), citing, Catawba, supra, 16 NRC at 467. The Braidwood Board permitted the intervenor to conduct further discovery and to amend its late-filed contention in order to comply with the basis and specificity requirements. The Board was willing to accommodate the intervenor because its contention involved potentially serious safety issues concerning the applicant's QA/QC program. Braidwood, supra, 16 NRC at 634-636, citing, Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-84-31, 20 NRC 446, 509-511 (1984).

According to the Board, its decision was not a conditional admission of a contention in violation of the Catawba ruling. The Board explained that it did reject the intervenor's late-filed contention, and that it properly exercised its discretion by giving the intervenor the opportunity to file an amended contention. Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-20, 21 NRC 1732, 1738-39 (1985), citing, 10 CFR §§ 2.714(a)(3), 2.714(b), 2.718.

An intervenor may initially submit a reasoned explanation for raising a contention which later will be buttressed with factual data after the parties engage in discovery. Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 617 (1985), citing, Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 182 (1981).

A petitioner who satisfies the interest requirement will be granted intervention if he states at least one contention within the scope of the proceeding with a proper factual basis. The Licensing Board has no duty to consider additional contentions for the purpose of determining the propriety of intervention once it has found that at least one good contention is stated. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1

& 2), ALAB-130, 6 AEC 423, 424 (1973); Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372 (1973); Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 245 (1973); Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 & 2), LBP-76-10, 3 NRC 209, 220 (1976). Although these cases predate amendments to 10 CFR § 2.714, those amendments retain, and in fact specifically recite, the "one good contention rule." See also Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 622 (1981); Public Service Co. of New Hampshire (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975, 978 (1984); Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), LBP-84-35, 20 NRC 887, 916 (1984).

Since a mandatory hearing is not required at the operating license stage, Licensing Boards should "take the utmost care" to assure that the "one good contention rule" is met in such a situation because, absent successful intervention, no hearing need be held. Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976). See also Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-183, 7 AEC 222, 226 n.10 (1974).

Note that a State participating as an "interested State" under 10 CFR § 2.715(c) need not set forth in advance any affirmative contentions of its own. Project Management Corporation (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 392-393 (1976).

Reasonable specificity requires that a contention include a reasonably specific articulation of its rationale. If an applicant believes that it can readily disprove a contention admissible on its face, the proper course is to move for summary disposition following its admission, not to assert a lack of specific basis at the pleading stage. Carolina Power & Light Co. and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 NRC 2069, 2070-2071 (1982).

The basis and specificity requirements are particularly important for contentions involving broad quality assurance and quality control issues. Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 634 (1985); Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-20, 21 NRC 1732, 1740-41 (1985), citing, Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-83-39, 18 NRC 67, 89 (1983).

The degree of specificity with which the basis for a contention must be alleged initially involves the exercise of judgment on a case-by-case basis. In passing on the admissibility of a contention, the Licensing Board need not reach the merits of the contention nor need the petition detail the evidence which will be offered in support of each contention. Nevertheless, it is incumbent upon intervenors to frame their contentions with sufficient preciseness to show that the issues raised are within the scope of the proceeding. Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP80-30, 12 NRC 683, 687-688 (1980), quoting, Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-83-76, 18 NRC 1266, 1269 (1983); Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-20, 21 NRC 1732, 1742 (1985).

Contentions must give notice of facts which petitioners desire to litigate and must be specific enough to satisfy the requirements of 10 CFR § 2.714. Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit No. 1), LBP-82-52, 16 NRC 183, 188-190, 193 (1982); see generally, CLI-81-25, 14 NRC 616 (1981), (guidelines for Board).

A simple reference to a large number of documents does not provide a sufficient basis for a contention. An intervenor must clearly identify and summarize the incidents being relied upon, and identify and append specific portions of the documents. Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-20, 21 NRC 1732, 1741 (1985), citing, Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 NRC 209, 216 (1976).

When a broad (through apparently admissible) contention has been admitted at an early stage in the proceeding, intervenors should be required to provide greater specificity and to particularize bases for the contention when the information required to do so has been developed. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-84-28, 20 NRC 129, 131 (1984).

The Commission's rules of practice do not require that a contention be in the form of a detailed brief; however, a contention, alleging an entire plan to be inadequate in that it fails to consider certain matters, should be required to specify in some way each portion of the plan alleged to be inadequate. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-75, 16 NRC 986, 993 (1982).

Originality of framing contentions is not a pleading requirement. Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683, 689 (1980).

Extraneous matters such as preservation of rights, statements of intervention, and directives for interpretation which accompany an intervenor's list of contentions will be disregarded as contrary to the Commission's Rules of Practice. Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683, 689-690 (1980).

It is not essential that pleadings of contentions be technically perfect. The Licensing Board would be reluctant to deny intervention on the basis of skill of pleading where it appears that the petitioner has identified interests which may be affected by a proceeding. Houston Lighting and Power Company (South Texas Projects, Units 1 and 2), ALAB-549, 9 NRC 644, 650 (1979).

It is neither Congressional nor Commission policy to exclude parties because the niceties of pleading were imperfectly observed. Sounder practice is to decide issues on their merits, not to avoid them on technicalities. Consumers Power Company (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 116-117 (1979).

A contention must be rejected where: it constitutes an attack on applicable statutory requirements; it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations; it is nothing more than a generalization regarding the intervenor's views of what applicable policies ought to be; it seeks to raise an issue which is not proper for adjudication in the proceeding; or it does not apply to the facility in question; or it seeks to raise an issue which is not concrete or litigable. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1035 (1982), citing, Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974); Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-75A, 18 NRC 1260, 1263 (1983); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-83-76, 18 NRC 1266, 1268-1269 (1983).

At the pleading stage all that is required for a contention to be acceptable for litigation is that it be specific and have a basis. Whether or not the contention is true is left to litigation on the merits in the licensing proceeding. Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-722, 17 NRC

546, 551 n.5 (1983), citing, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-806, 21 NRC 1183, 1193 n.39 (1985).

A basis for a contention is set forth with reasonable specificity if the applicants are sufficiently put on notice so that they will know, at least generally, what they will have to defend against or oppose, and if there has been sufficient foundation assigned to warrant further exploration of the proposed contention. Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-1, 19 NRC 29, 34 (1984), citing, Peach Bottom, supra, 8 AEC at 20-21; Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-20, 21 NRC 1732, 1742 (1985).

2.9.5.2 Requirement of Oath from Intervenors

Amendments to 10 CFR § 2.714, effective on May 26, 1978, eliminated the requirement that petitions to intervene be filed under oath.

2.9.5.3 Requirement of Contentions for Purposes of Admitting Petitioner as a Party

10 CFR § 2.714 requires that there be some basis for the contentions set forth in the supplement to the petition to intervene and that the contentions themselves be set forth with particularity. In deciding whether these criteria are met, Licensing Boards are not to decide whether the proposed contentions are meritorious. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 & 2), ALAB-183, 7 AEC 210, 216 (1974); Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 244 (1973). Section 2.714 does not require the petition to detail the evidence which will be offered in support of each contention. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-130, 6 AEC 423, 426 (1973). Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1654 (1982); Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), LBP-84-40A, 20 NRC 1195, 1198 (1984). The Appeal Board has prohibited Licensing Boards from dismissing contentions on the merits at the pleading stage even if demonstrably insubstantial. Washington Public Power Supply System (WPPSS Nuclear Project No. 1), LBP-83-66, 18 NRC 780, 789 (1983), citing, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550 (1980).

For a petitioner who supports a license application, all that need be initially asserted to fulfill the contention requirement of 10 CFR § 2.714 is that the application is meritorious and should be granted. After contentions opposing the license application have been set forth, however, the Licensing Board is free to require intervenors supporting the application to take a position on those contentions. Nuclear Engineering Co., Inc. (Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 n.5 (1978).

Where intervenors have been consolidated, it is not necessary that a contention or contentions be identified to any one of the intervening parties, so long as there is at least one contention admitted per intervenor. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-35, 14 NRC 682, 687 (1981).

Despite the fact that a petitioner need not plead evidence in setting forth the basis for its contentions, some sort of minimal basis indicating the potential validity of the contention is required. Thus, for example, allegations that an amendment permitting a cooperative to become a co-owner of a nuclear plant will increase the possibility that nuclear waste will be stored in the cooperative's service area, and that demand for the nuclear facility in that service area will be stimulated are too remote and speculative to be considered as possible effects of the amendment proceeding. Consequently such allegations will not establish a petitioner's right to intervene. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 386-387, aff'd, ALAB-470, 7 NRC 473 (1978).

The obligation to establish the actual existence of some factual support for the particular assertions that petitioners for intervention have advanced as the basis for their contentions need not be undertaken as a precondition to a board's acceptance of a contention for the limited purpose of determining whether to allow intervention under 10 CFR § 2.714. Rather, that obligation arises solely (1) in response to a subsequent motion of another party seeking to dispose of the contention summarily under 10 CFR § 2.749 for want of a genuine issue of material fact; or (2) in the absence of such a motion, at the evidentiary hearing itself. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 547-551 (1980); Washington Public Power Supply System (WPPSS Nuclear Project No. 1), LBP-83-66, 18 NRC 780, 789 (1983), citing, Allens Creek, *supra*, 11 NRC at 550; Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No.1), LBP-83-76, 18 NRC 1266, 1271 n.6 (1983).

The basis with reasonable specificity standard requires that an intervenor include in a safety contention a statement of the reason for his contention. This statement must either allege with particularity that an applicant is not complying with a specified regulation, or allege with particularity the existence and detail of a substantial safety issue on which the regulations are silent. In the absence of a "regulatory gap," the failure to allege a violation of the regulations or an attempt to advocate stricter requirements than those imposed by the regulations will result in a rejection of the contention, the latter as an impermissible collateral attack on the Commission's rules. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982), citing, 10 CFR § 2.758.

Prior to entertaining any suggestion that a contention not be admitted, the proponent of the contention must be given some chance to be heard in response. The petitioners cannot be required to have anticipated in the contentions themselves the possible arguments their opponents might raise as grounds for denying admission of those proffered contentions. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521, 525 (1979).

Although the Rules of Practice do not explicitly provide for the filing of either objections to contentions or motions to dismiss them, each presiding board must fashion a fair procedure for dealing with such objections to contentions as are filed. The cardinal rule of fairness is that each side must be heard. Allens Creek, supra, 11 NRC at 524.

2.9.5.4 Material Used in Support of Contentions

While it may be true that the important document in evaluating the adequacy of an agency's environmental review is the agency's final impact statement, a petitioner for intervention may look to the Applicant's Environmental Report for factual material in support of a proposed contention. Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291, 303 (1979).

The specificity and basis requirements for a proposed contention under 10 CFR § 2.714(b) can be satisfied where the contention is based upon allegations in a sworn complaint filed in a judicial action and the applicable passages therein are specifically identified. This holds notwithstanding the fact that the allegations are contested. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-84-20, 19 NRC 1285, 1292-94 (1984).

An intervenor can establish a sufficient basis for a contention by referring to a source and drawing an assertion from that reference. Commonwealth Edison Co. (Braidwood Nuclear Power Plant, Units 1 and 2), LBP-85-20, 21 NRC 1732, 1740 (1985), citing, Houston Lighting and Power Co. (Allens Creek Generating Station, Unit 1), ALAB-590, 11 NRC 542, 548-49 (1980).

2.9.5.5 Timeliness of Submission of Contentions

Not later than 15 days before a special prehearing conference or, where no special prehearing conference is held, 15 days prior to the holding of the first prehearing conference, the petitioner shall file a supplement to his petition to intervene which must include a list of his contentions. Additional time for filing the supplement may be granted based upon a balancing of the factors listed in 10 CFR § 2.714(a)(1). 10 CFR § 2.714 (b); Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-82-63, 16 NRC 571, 576 (1982), citing, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508 (1982); Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), LBP-82-91, 16 NRC 1364, 1366-67 (1982).

Commission regulations direct that contentions be filed in advance of a prehearing conference. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-737, 18 NRC 168, 172 n.4 (1983), citing, 10 CFR § 2.714(b).

In considering the admissibility of late-filed contentions, the Licensing Board must balance the five factors specified in 10 CFR § 2.714(a) for dealing with nontimely filings. Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Station), LBP-79-22, 10 NRC 213, 214 (1979). A late filed contention must meet the requirements concerning good cause for late filing pursuant to 10 CFR § 2.714(a)(1). Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-90, 16 NRC 1359, 1360 (1982); Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), LBP-82-91, 16 NRC 1364, 1366-67 (1982); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-42, 18 NRC 112, 117 (1983).

The factors which must be balanced in determining whether to admit a late filed contention pursuant to 10 CFR § 2.714(a)(1) are: (1) Good cause, if any, for failure to file on time; (2) The availability of other means whereby the petitioner's interest will be protected; (3) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record; (4) The extent to which the petitioner's interest will

be represented by existing parties; (5) The extent to which the petitioner's participation will broaden the issues or delay the proceeding. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1141 (1983); Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-75A, 18 NRC 1260, 1261-1262 (1983), citing, Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167 (1983); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-80, 18 NRC 1404, 1405 (1983); Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-1, 19 NRC 29, 31 (1984), citing, Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983); Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-84-20, 19 NRC 1285, 1291 (1984), citing, Catawba, *supra*, 17 NRC 1041; Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-85-9, 21 NRC 524, 526 (1985); Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 628 (1985).

The required balancing of factors is not obviated by the circumstances that the proffered contentions are those of a participant that has withdrawn from the proceeding. South Texas Project, *supra*, 16 NRC at 1367, citing, Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 795-98 (1977).

In balancing the lateness factors, all factors must be taken into account; however, there is no requirement that the same weight be given to each of them. South Texas Project, *supra*, 16 NRC at 1367, citing, South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 895 (1981); Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-84-20, 19 NRC 1285, 1292 (1984). A Board is entitled to considerable discretion in the method it employs to balance the five lateness factors. Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 631 (1985), citing, Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 107 (1976).

When there are no other available means to protect a petitioner's interests, that factor and the factor of the extent to which other parties would protect that interest are entitled to less weight than the other three factors enumerated in 10 CFR § 2.714(a). Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-42, 18 NRC 112, 118 (1983); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-85-9, 21 NRC 524, 528 (1985), citing, South Carolina Electric and

Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 895 (1981); Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 629 (1985).

Where good cause for failure to file on time has not been demonstrated, a contention may still be accepted, but the burden of justifying acceptance of a late contention on the basis of the other factors is considerably greater. Even where the factors are balanced in favor of admitting a late-filed contention, a tardy petitioner without a good excuse for lateness may be required to take the proceeding as he finds it. South Texas Project, supra, 16 NRC at 1367, 1368, citing, Nuclear Fuel Services, Inc. and N.Y.S. Atomic and Space Development Authority (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275, 276 (1975).

Where good cause for a late filing is demonstrated, the other factors are given lesser weight. Midland, supra, 16 NRC at 589; Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-75A, 18 NRC 1260, 1261 (1983); Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-84-20, 19 NRC 1285, 1292 (1984).

In considering the extent to which the petitioner had shown good cause for filing supplements out-of-time, the Licensing Board recognized that the petitioner was appearing pro se until just before the special prehearing conference. Petitioner's early performance need not adhere rigidly to the Commission's standards and, in this situation, the Board would not weigh the good cause factor as heavily as it might otherwise. Florida Power and Light Company (Turkey Point Nuclear Generating Station, Units 3 and 4), LBP-79-21, 10 NRC 183, 190 (1979).

Withdrawal of one party has been held not to constitute good cause for the delay of a petitioner in seeking to substitute itself for the withdrawing party, or, comparably, to adopt the withdrawing party's contentions. South Texas Project, supra, 16 NRC at 1369, citing, Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 796-97 (1977). The same standards apply to an existing intervenor seeking to adopt the abandoned contentions of another intervenor as to a "newly arriving legal stranger." South Texas Project, supra, 16 NRC at 1369. However, if under the circumstances of a particular case, there is a sound foundation for allowing one entity to replace another, it can be taken into account in making the "good cause" determination under 10 CFR § 2.714(a). Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 384 (1985), citing, River Bend, supra, 6 NRC at 796.

The appearance of a newspaper article is not sufficient grounds for the late-filing of a contention about matters that have been known for a long time. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-11, 15 NRC 348 (1982). Compare, LBP-82-53, 16 NRC 196, 200-01 (1982) (Up-to-date Journals demonstrate good cause) and LBP-82-15, 15 NRC 555, 557 (1982).

An intervenor cannot establish good cause for filing a late contention when the information on which the contention is based was publicly available several months prior to the filing of the contention. Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 628-629 (1985).

The determination whether to accept a contention that was susceptible of filing within the period prescribed by the Rules of Practice on an untimely basis involves a consideration of all five 10 CFR § 2.714(a) factors and not just the reason, substantial or not as the case may be, why the petitioner did not meet the deadline. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 470 (1982), vacated in part on other grounds, CLI 83-19, 17 NRC 1041 (1983).

The proponent of a late contention should affirmatively address the five factors and demonstrate that, on balance, the contention should be admitted. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-82-63, 16 NRC 571, 578 (1982), citing, Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3) ALAB-615, 12 NRC 350, 352 (1980).

Section 189a of the Atomic Energy Act of 1954, as amended ("Atomic Energy Act" or "Act") does not require the Commission to give controlling weight to the good cause factor in 10 CFR § 2.714(a)(1)(i) in determining whether to admit a late-filed contention based on licensing documents which were not required to be prepared early enough to provide a basis for a timely-filed contention. The unavailability of those documents does not constitute a showing of good cause for admitting a late-filed contention when the factual predicate for that contention is available from other sources in a timely manner. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1043 (1983).

The institutional unavailability of a licensing-related document does not establish good cause for filing a contention late if information was publicly available early enough to provide the basis for the timely filing of that contention. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1045, 1048 (1983); Long Island Lighting Co. (Shoreham Nuclear

Power Station, Unit 1), LBP-83-42, 18 NRC 112, 117 (1983); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-84-30, 20 NRC 426, 436-37 (1984). Section 189a of the Act is not offended by a procedural rule that simply recognizes that the public's interest in an efficient administrative process is not properly accounted for by a rule of automatic admission for certain late-filed contentions. Catawba, supra, 17 NRC at 1046. Cf. BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974).

10 CFR § 2.714(a)(1) requires that all five factors enumerated in that regulation should be applied to late-filed contentions even where the licensing-related document, upon which the contentions are predicated, was not available within the time prescribed for filing timely contentions. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-42, 18 NRC 112, 116 (1983). The Commission has held that any refiled contention would have to meet the five-factor test of 10 CFR § 2.714(a)(1), if not timely filed, even if the specifics could not have been known earlier because the documents on which they were based had not yet been issued. Washington Public Power Supply System (WPPSS Nuclear Project No. 1), LBP-83-66, 18 NRC 780, 796 (1983), citing Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983).

Even where an applicant does not comply with a standing order to serve all relevant papers on the Board and parties, the admissibility of an intervenor's late filed contention directed toward such papers must be determined by a balancing of all five factors. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-765, 19 NRC 645, 657 (1984), overruling in part, LBP-84-16, 19 NRC 857, 868 (1984).

Under 10 CFR § 2.714(a), good cause may exist for a late-filed contention if it: (1) is wholly dependent upon the content of a particular document; (2) could not therefore be advanced with any degree of specificity in advance of the public availability of that document; and (3) is tendered with the requisite degree of promptness once that document comes into existence and is amenable to rejection on the strength of a balancing of all five of the late intervention factors set forth in that section. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-737, 17 NRC 168, 172 n.4 (1983), citing Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 41, 1045 (1983); Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-1, 19 NRC 29, 31 (1984).

A submitted document, while perhaps incomplete, may be enough to require contentions related to it to be filed promptly. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-83-39, 18 NRC 67, 69 (1983).

The admissibility of a late-filed contention must be determined by a balancing of all five of the late intervention factors in 10 CFR § 2.714(a). Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-83-23, 18 NRC 311, 312 (1983).

When an intervenor does not show good cause for the non-timely submission of contentions, it must make a compelling showing on the other four criteria of 10 CFR § 2.714(a). Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit 1), LBP-83-58, 18 NRC 640, 663 (1983), citing, Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725 (1982); Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 629 (1985).

With respect to the second factor of 10 CFR § 2.714(a) (availability of other means of protecting late petitioners' interest) and the fourth factor (the extent to which late petitioners' interest will be represented by existing parties), the applicants in Zimmer, supra, 10 NRC at 215, claimed that the Staff would represent the public interest and by inference, late petitioners' interest as well. The Licensing Board ruled that although the Staff clearly represents the public interest, it cannot be expected to pursue all issues with the same diligence as an intervenor would pursue its own issue. Moreover, unless an issue was raised in a proceeding, the Staff would not attempt to resolve the issue in an adjudicatory context. Applicants' reliance on the Staff review gave inadequate consideration to the value of a party's pursuing the participational rights afforded it in an adjudicatory hearing. Zimmer, supra, 10 NRC at 215; Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-80, 18 NRC 1404, 1407-1408 (1983); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-85-9, 21 NRC 524, 527-528 (1985); Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 629 (1985). See Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 384 n.108 (1985); Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1173-77 (1983).

When considering the second factor of 10 CFR § 2.714(a)(1), the availability of other means to protect an intervenor's interests, a Board may only inquire whether there are other forums in which the intervenor itself might protect its

interests. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-85-9, 21 NRC 524, 528 (1985), citing, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508, 513 n.13 (1982).

Informal negotiations among parties, even under a Board's aegis, is not an adequate substitute for a party's right to pursue its legitimate interest in issues in formal adjudicatory hearings. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-806, 21 NRC 1183, 1191 (1985).

Late contentions filed by a city did not overlap a contention of another intervenor which had already been accepted in the proceeding. The representative of a private party cannot be expected to represent adequately the presumably broader interests represented by a governmental body. Zimmer, supra, 10 NRC at 216 n.4, citing, Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975).

A contention based on a Draft Environmental Statement (DES) which contains no new information relevant to the contention, lacks good cause for late filing. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-79, 16 NRC 1116, 1118 (1982).

Before a contention is excluded from consideration, the intervenor should have a fair opportunity to respond to applicant's comments. When an intervenor files a late contention and argues that it has good cause for late filing because of the recent availability of new information, intervenor should have the chance to comment on applicant's objection that the information was available earlier. Intervenors should be permitted to reply to the opposition to the admission of a late filed contention. The principle that a party should have an opportunity to respond is reciprocal. When intervenor introduces material that is entirely new, applicant will be permitted to respond. Due process requires an opportunity to comment. If intervenors find that they must make new factual or legal arguments, they should clearly identify the new material and give an explanation of why they did not anticipate the need for the material in their initial filing. If the explanation is satisfactory, the material may be considered, but applicant will be permitted to respond. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-89, 16 NRC 1355, 1356 (1982).

The finding of good cause for the late filing of contentions is related to the total previous unavailability of information. Philadelphia Electric Co. (Limerick Generating

Station, Units 1 and 2), LBP-83-39, 18 NRC 67, 69 (1983). Ability to contribute to the record is relevant to the admissibility of late-filed contentions. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-83-37, 18 NRC 52, 56 n.5 (1983). An intervenor need not present expert witnesses or indicate what testimony it plans to present if it has established its ability to contribute to the development of a sound record in other ways. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-80, 18 NRC 1404, 1408 n.14 (1983). See also Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1182-1183 (1983).

In determining an intervenor's ability to assist in the development of a sound record, a Board may consider the fact that legal counsel for the intervenor contributed to the development of a sound record in a prior proceeding involving the same applicant and similar issues. Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 629-630 (1985).

The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record is only meaningful when the proposed participation is on a significant, triable issue. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-84-30, 20 NRC 426, 440 (1984).

The extent to which an intervenor may reasonably be expected to assist in developing a sound record is the most significant of the factors to be balanced with respect to late-filed contentions, at least in situations where litigation of the contention will not delay the proceeding. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-85-9, 21 NRC 524, 528 (1985).

Given a proceeding initially noticed in 1978 for which a Special Prehearing Conference was held early in 1979, any currently filed contentions would be untimely. That does not mean, after balancing the factors in 10 CFR § 2.714(a) that the untimeliness should bar admission of the contention. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-83-37, 18 NRC 52, 55 (1983), citing, Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-82-63, 16 NRC 571, 577 (1982).

A party seeking to add a new contention after the close of the record must satisfy both standards for admitting a late-filed contention set forth in 10 CFR § 2.714(a)(1) and the criteria, as established by case law, for reopening the record, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1136 (1983), citing, Pacific Gas and Electric Co. (Diablo Canyon Nuclear

Power Plant, Units 1 and 2), CLI-82-39, 16 NRC 1712, 1715 (1982), despite the fact that nontimely contentions raise matters which have not been previously litigated. Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station, Unit 1), LBP-83-58, 18 NRC 640, 663 (1983), citing, Diablo Canyon, *supra*, 16 NRC at 1714-15.

Where the delay in filing contentions is great and the issues are serious, the seriousness of an issue does not imply that the party raising it is somehow forever exempted from the Rules of Practice. Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit 1), LBP-83-58, 18 NRC 640, 663 (1983).

The admission of any new contention may broaden and delay the completion of a proceeding by increasing the number of issues which must be considered. A Board may consider the following factors which may minimize the impact of the new contention: how close to the scheduled hearing date the new contention was filed; and the extent of discovery which had been completed prior to the filing of the new contention. A Board will not admit a new contention which is filed so close to the scheduled hearing date that the parties would be denied an adequate opportunity to pursue discovery on the contention. Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 630-631 (1985), citing, South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 889 (1981).

A Board may refuse to admit a late-filed contention where it determines that the contention is so rambling and disorganized that any attempt to litigate the contention would unduly broaden the issues and delay the proceeding. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-75A, 18 NRC 1260, 1262-1263 (1983).

The Licensing Board's general authority to shape the course of a proceeding, 10 CFR § 2.718(e), will not be utilized as the foundation for the Board's acceptance of a late-filed contention. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-84-20, 19 NRC 1285, 1290 (1984).

2.9.5.6 Contentions Challenging Regulations

The assertion of a claim in an adjudicatory proceeding that a regulation is invalid is barred as a matter of law. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 2), ALAB-456, 7 NRC 63, 65 (1978).

Contentions challenging the validity of NRC regulations are inadmissible under the provisions of 10 CFR § 2.758. Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683, 692-93 (1980); Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-784, 20 NRC 845, 846 (1984).

When a Commission regulation permits the use of a particular analysis or technique, a contention which asserts that a different analysis or technique should be utilized is inadmissible because it attacks the Commission's regulations. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-83-76, 18 NRC 1266, 1273 (1983).

Under 10 CFR § 2.758, the Commission has withheld jurisdiction from Licensing Boards to entertain attacks on the validity of Commission regulations in individual licensing proceedings except in certain "special circumstances." Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-218, 8 AEC 79, 88-89 (1974). 10 CFR § 2.758 sets out those special circumstances which an intervenor must show to be applicable before a contention attacking the regulations will be admissible. Further, 10 CFR § 2.758 provides for certification to the Commission of the question of whether a rule or regulation of the Commission should be waived in a particular adjudicatory proceeding where an adjudicatory board determines that, as a result of special circumstances, a prima facie showing has been made that application of the rule in a particular way would not serve the purposes for which the rule was adopted and, accordingly, that a waiver should be authorized. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 584-585 (1978).

Intervenors are authorized to file a petition for a waiver of a rule, pursuant to 10 CFR § 2.758. It is not, however, enough merely to allege the existence of special circumstances; such circumstances must be set forth with particularity. The petition should be supported by proof, in affidavit or other appropriate form, sufficient for the Licensing Board to determine whether the petitioning party has made a prima facie showing for waiver. Carolina Power & Light Co. and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 NRC 2069, 2073 (1982).

2.9.5.7 Contentions Involving Generic Issues

Licensing Boards should not accept in individual licensing cases any contentions which are or are about to become the subject of general rulemaking. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799, 816 (1981). They appear to be permitted to

accept "generic issues" which are not and are not about to become the subject of rulemaking, however. Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-218, 8 AEC 79 (1974). See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-83-76, 18 NRC 1266, 1271 (1983). In order for a party or interested State to introduce such an issue into a proceeding, it must do more than present a list of generic technical issues being studied by the Staff or point to newly issued Regulatory Guides on a subject. There must be a nexus established between the generic issue and the particular permit or application in question. To establish such a nexus, it must be shown that (1) the generic issue has safety significance for the particular reactor under review, and (2) the fashion in which the application deals with the matter is unsatisfactory or the short term solution offered to the problem under study is inadequate. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 773 (1977); Illinois Power Co. (Clinton Power Station, Unit No. 1), LBP-82-103, 16 NRC 1603, 1608 (1982), citing, River Bend, supra, 6 NRC 760 at 773; Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1657 (1982); Duquesne Light Co. (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 418, 420 (1984), citing, River Bend, supra, 6 NRC at 773, and Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245, 248 (1978).

Parties interested in litigating unresolved safety issues must do something more than simply offer a checklist of unresolved issues; they must show that the issues have some specific safety significance for the reactor in question and that the application fails to resolve the matters satisfactorily. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-729, 17 NRC 814, 889 (1983), aff'd on other grounds, CLI-84-11, 20 NRC 1 (1984), citing, Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 772-73 (1977).

In Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-1A, 15 NRC 43 (1982), the Licensing Board rejected the applicant's contention that Douglas Point, supra, requires dismissal whenever there is pending rulemaking on a subject at issue. The Board distinguished Douglas Point on several grounds: (1) In Douglas Point, there were no existing regulations on the subject, while in Perry, regulations do exist and continue in force regardless of proposed rulemaking; (2) The issue in Perry -- whether Perry should have an automated standby liquid control system (SLCS) given the plant's specific characteristics -- is far more specific than the issues in Douglas Point (i.e., nuclear waste disposal issues); (3) The

proposed rules recommend a variety of approaches on the SLCS issue requiring analysis of the plant's situation, so any efforts by the Board to resolve the issue would contribute to the analysis; (4) The Commission did not bar consideration of such issues during the pendency of its proposed rulemaking, as it could have. Unless the Commission has specifically directed that contentions be dismissed during pendency of proposed rulemaking, no such dismissal is required.

Where the Commission has explicitly barred Board consideration of the subject of a contention on which rulemaking is pending, the Board may not exercise jurisdiction over the contention. Cleveland Electric Illuminating Co. (Perry Nuclear Plant, Units 1 and 2), LBP-82-11, 15 NRC 348, 350 (1982). Where the Commission has held its own decision whether to review an Appeal Board opinion in abeyance pending its decision whether or not to initiate a further rulemaking, and has instructed the Licensing Boards to defer consideration of the issue, a contention involving the issue is unlitigable and inadmissible. Duquesne Light Co. (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 417-18 (1984), citing, Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79 (1974).

A brief suspension of consideration of a contention will not be continued when it no longer appears likely that the Commission is about to issue a proposed rule on the matter which was the subject of the contention. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant 1, Units 1 and 2), LBP-81-42, 14 NRC 842, 846-847 (1981).

While a Licensing Board should not accept contentions that are or are about to become the subject of general rulemaking, where a contention has long since been admitted and is still pending when notice of rulemaking is published, the intent of the Commission determines whether litigation of that contention should be undertaken. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-81-51, 14 NRC 896, 898 (1981), citing, Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79 (1974).

Before a contention presenting a generic issue can be admitted, the intervenor must demonstrate a specific nexus between each contention and the facility that is the subject of the proceeding. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-15, 15 NRC 555, 558-59 (1982).

Contentions which constitute a general attack upon the methods used by the NRC Staff to insure compliance with regulations, without raising any issues specifically related to matters under construction, are not appropriate for resolution in a particular licensing proceeding. Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683, 690 (1980).

2.9.5.8 Contentions Challenging Absent or Incomplete Documents

At the contention formulation stage of the proceeding, an intervenor may plead the absence or inadequacy of documents or responses which have not yet been made available to the parties. The contention may be admitted subject to later refinement and specification when the additional information has been furnished or the relevant documents have been filed. Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683 (1980). Note, however, that the absence of licensing documents does not justify admission of contentions which do not meet the basis and specificity requirements of 10 CFR § 2.714. That is, a non-specific contention may not be admitted, subject to later specification, even though licensing documents that would provide the basis for a specific contention are unavailable. Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), ALAB-687, 16 NRC 460 (1982), vacated in part on other grounds, CLI-83-19, 17 NRC 1041 (1983).

Rulings on contentions concerning undeveloped portions of emergency plans may be deferred. To admit such contentions would be to risk unnecessary litigation. But to deny the contentions would unfairly ignore the insufficient development of these portions. Fairness and efficiency seem to dictate that rulings on such contentions be deferred. The objectives of such deferrals are to encourage negotiation, to avoid unnecessary litigation, and to make necessary litigation as focused as possible. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-84-18, 19 NRC 1020, 1028 (1984). Cf. Cincinnati Gas and Electric Co. (Wm. H. Zimmer Nuclear Power Station, Unit 1), ALAB-727, 17 NRC 760, 775-76 (1983).

When information is not available, there will be good cause for filing a contention based on that information promptly after the information becomes available. However, the five late-filing factors must be balanced in determining whether to admit such a contention filed after the initial period for submitting contentions. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-83-39, 18 NRC 67, 69 (1983); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-806, 21 NRC 1183, 1190 (1985).

2.9.5.9 Contentions re Adequacy of Security Plan

The adequacy of a nuclear facility's physical security plan may be a proper subject for challenge by intervenors in an operating license proceeding. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2), CLI-80-24, 11 NRC 775, 777 (1980); Consolidated Edison Company (Indian Point Station, Unit 2), CLI-74-23, 7 AEC 947, 949 (1974).

Where an intervenor seeking to challenge an applicant's security plan does not produce a qualified expert to review the plan and declines to submit to a protective order, its vague contentions must be dismissed for failure to meet conditions that could produce an acceptably specific contention. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-51, 16 NRC 167, 177 (1982).

2.9.5.10 Defective Contentions

Where contentions are defective, for whatever reason, Licensing Boards have no duty to recast them to make them acceptable under 10 CFR § 2.714. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 406 (1974). However, although a Licensing Board is not required to recast contentions to make them acceptable, it also is not precluded from doing so. Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291, 295-296 (1979).

2.9.5.11 Discovery to Frame Contentions

A petitioner is not entitled to discovery to assist him in framing the contentions in his petition to intervene. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188, 192, reconsid. den., ALAB-110, 6 AEC 247, aff'd, CLI-73-12, 6 AEC 241 (1973).

2.9.5.12 Stipulations on Contentions

(RESERVED)

2.9.5.13 Appeals of Rulings on Contentions

Appellate review of a Licensing Board ruling rejecting some but not all of a party's contentions is available only at the end of the case. Northern States Power Co. (Tyrone Energy Park, Unit 1), ALAB-47, 8 NRC 251, 252 (1978).

Appeal Boards grant Licensing Boards broad discretion in balancing the five factors which make up the criteria for late-filed contentions listed in 10 CFR § 2.714(a)(1).

However, an Appeal Board may overturn a Licensing Board's decision where no reasonable justification can be found for the outcome that is determined. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-806, 21 NRC 1183, 1190 (1985), citing, Washington Public Power Supply System (WPPSS Nuclear Project 3), ALAB-747, 18 NRC 1167, 1171 (1983).

2.9.6 Conditions on Grants of Intervention

10 CFR § 2.714(e) empowers a Licensing Board to condition an order granting intervention on such terms as may serve the purposes of restricting duplicative or repetitive evidence and of having common interests represented by a single spokesman. 10 CFR § 2.715a deals with the general authority to consolidate parties in construction permit or operating license proceedings. In a license amendment proceeding, there is no good reason why the provisions of Section 2.715a cannot be looked to in exercising the power granted by Section 2.714(e), which section applies to all adjudicatory proceedings. Duke Power Company (Oconee Nuclear Station and McGuire Nuclear Station), ALAB-528, 9 NRC 146, 150 n.9 (1979).

2.9.7 Appeals of Rulings on Intervention

The regulations contain a special provision allowing an interlocutory appeal from a Licensing Board order on petitions to intervene. The appellant must file a notice to appeal and supporting brief within 10 days after service of the Licensing Board's order. 10 CFR § 2.714a. Other parties may file briefs in support of or in opposition to the appeal within 10 days of service of the appeal.

An Appeal Board will not review the grant or denial of an intervention petition unless an appeal has been taken under 10 CFR § 2.714a. Once the time prescribed in that Section for perfecting an appeal has expired, the order below becomes final. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), ALAB-713, 17 NRC 83, 84 n.1 (1983).

It is settled under the Commission's Rules of Practice that a petitioner for intervention may not take an interlocutory appeal from Licensing Board action on his petition unless that action constituted an outright denial of the petition. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 384 (1979); Puget Sound Power and Light Co. (Skagit/Hanford Nuclear Power Project, Units 1 and 2), ALAB-712, 17 NRC 81, 82 (1983). A petitioner may appeal only if the Licensing Board has denied the petition in

its entirety, i.e., -- has refused the petitioner entry into the case. A petitioner may not appeal an order admitting petitioner but denying certain contentions. 10 CFR § 2.714(b); Power Authority of the State of New York (Greene County Nuclear Plant), ALAB-434, 6 NRC 471 (1977); Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-329, 3 NRC 607 (1976); Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-302, 2 NRC 856 (1975); Puerto Rico Water Resources Authority (North Coast Nuclear Plant, Unit 1), ALAB-286, 2 NRC 213 (1975); Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), ALAB-273, 1 NRC 492, 494 (1975); Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), ALAB-269, 1 NRC 411 (1975); Philadelphia Electric Co. (Fulton Engineering Station, Units 1 & 2), ALAB-206, 7 AEC 841 (1974).

A Licensing Board's failure, after a reasonable length of time, to rule on a petition to intervene is tantamount to a denial of the petition. Where the failure of the Licensing Board to act is both unjustified and prejudicial, the petitioner may seek interlocutory review of the Licensing Board's delay under 10 CFR § 2.714a, which provides for interlocutory review of denials of petitions to intervene. Detroit Edison Company (Greenwood Energy Center, Units 2 & 3), ALAB-376, 5 NRC 426 (1977).

A State seeking to participate as an "interested State" under 10 CFR § 2.715(c) may appeal an order barring such participation. However, the State's special status does not confer any right to seek review of an order which allows the State to participate but excludes an issue which it seeks to raise. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-329, 3 NRC 607 (1976).

The applicant, the Staff and any party other than the petitioner can appeal an intervention order only on the ground that the petition should have been denied in whole. 10 CFR § 2.714a(c). An appeal from an intervention order carries with it a mandatory briefing requirement. Failure to file a brief will result in dismissal of the appeal. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-140, 6 AEC 575 (1973).

For a reaffirmation of the established rule that an appeal concerning an intervention petition must await the ultimate grant or denial of that petition, see Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-586, 11 NRC 472 (1980); Detroit Edison Company (Greenwood Energy Center, Units 2 & 3), ALAB-472, 7 NRC 570, 571 (1978). In this vein, a Licensing Board order which determines that petitioner has met the "interest" requirement for intervention and that mitigating factors

overcome the untimeliness of the petition but does not rule on whether petitioner has met the "contentions" requirement is not a final disposition of the petition to intervene. Cincinnati Gas & Electric Company (William H. Zimmer Nuclear Power Station), ALAB-595, 11 NRC 860, 864 (1980); Greenwood Energy Center, supra.

Similarly, the action of a Licensing Board in provisionally ordering a hearing and preliminarily ruling on petitions for leave to intervene is not appealable under 10 CFR § 2.714a in a situation where the Board cannot rule on contentions and the need for an evidentiary hearing until after the special prehearing conference required under 10 CFR § 2.751a and where the petitioners denied intervention may qualify on refiling. Consumers Power Company (Midland Plant, Units 1 & 2), LBP-78-27, 8 NRC 275, 280 (1978).

While the regulations do not explicitly provide for Commission review of decisions on intervention, the Commission has entertained appeals in this regard and review by the Commission apparently may be sought. Florida Power & Light Co. (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939 (1978).

With regard to briefing on appeals, 10 CFR § 2.714a does not authorize an appellant to file a brief in reply to parties' briefs in opposition to the appeal. Rather, leave to file a reply brief must be obtained. Nuclear Engineering Co. (Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 745 n.9 (1978).

2.9.7.1 Standards for Reversal of Rulings on Intervention

A Licensing Board has wide latitude to permit the amendment of defective petitions prior to the issuance of its final order on intervention. The Board's decision to allow such amendment will not be disturbed on appeal absent a showing of gross abuse of discretion. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188, 194 (1973).

A Licensing Board's determination as to the "personal interest" of a petitioner will be reversed only if it is irrational. Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 244 (1973); Prairie Island, supra.

Similarly, a Licensing Board's determination that good cause exists for untimely filing will be reversed only for an abuse of discretion. USERDA (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383 (1976); Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2),

ALAB-342, 4 NRC 98 (1976); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-339, 4 NRC 20 (1976); Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-329, 3 NRC 607 (1976).

The principle that Licensing Board determinations on the sufficiency of allegations of affected interest will not be overturned unless irrational presupposes that the appropriate legal standard for determining the "personal interest" of a petitioner has been invoked. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 57 n.5 (1979).

2.9.8 Reinstatement of Intervenor After Withdrawal

A voluntary withdrawal of intervention is "without prejudice" in that it does not constitute a legal bar to the later reinstatement of the intervention upon the intervenor's showing of good cause. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), LBP-73-41, 6 AEC 1057 (1973). The factors to be considered in the good cause determination are generally the same as those considered under 10 CFR § 2.714(a) with primary emphasis on the delay of the proceeding, prejudice to other parties and adequate protection of the intervenor's interests. Grand Gulf, *supra*.

2.9.9 Rights of Intervenors at Hearing

In an operating license proceeding (with the exception of certain NEPA issues), the applicant's license application is in issue, not the adequacy of the Staff's review of the application. An intervenor in an operating license proceeding is free to challenge directly an unresolved generic safety issue by filing a proper contention, but it may not proceed on the basis of allegations that the Staff has somehow failed in its performance. Concomitantly, once the record has closed, a generic safety issue may be litigated directly only if standards for late-filed contentions and reopening the record are met. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807 (1983), review denied, CLI-83-32, 18 NRC 1309 (1983).

The rules cannot legitimately be read as requiring that, once an intervenor is represented by counsel, that counsel be the party's sole representative in the proceeding. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-83-28, 17 NRC 987, 994 (1983).

When a party is permitted to enter a case late, it is expected to take the case as it finds it. It follows that when a party that has participated in a case all

along simply changes representatives in midstream, knowledge of the matters already heard and received into evidence is imputed to it. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1246 (1984), rev'd. in part on other gnds., CLI-85-2, 21 NRC 282 (1985).

Under principles enunciated in Prairie Island, an intervenor may ordinarily conduct additional cross-examination and submit proposed factual and legal findings on contentions sponsored by others. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 863, 867-68 (1974), aff'd in pertinent part, CLI-75-1, 1 NRC 1 (1975). However, that does not elevate the intervenor's status to that of co-sponsor of the contentions. The Commission's regulations require that, at the outset of a case, each intervenor submit "a list of the contentions which it seeks to have litigated." 10 CFR § 2.714(b). It follows from this that one intervenor may not introduce affirmative evidence on issues raised by another intervenor's contentions. Prairie Island, *supra*, 8 AEC at 869 n.17; Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 383 n.102 (1985).

Contentions left without a sponsor due to the withdrawal of one intervenor may be adopted by another intervenor upon satisfaction of the five-factor balancing test ordinarily used to determine whether to grant a non-timely request for intervention, or to permit the introduction of additional contentions by an existing intervenor after the filing date. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 381-82 (1985). See 10 CFR §§ 2.714(a)(1), (b). For a detailed discussion of the five-factor test, See Sections 2.9.3.3.3 and 2.9.5.5.

An intervenor in an operating license proceeding may not proceed on the basis of allegations that the Staff has somehow failed in its performance; at least when the evidence shows that the alleged inadequate Staff review did not result in inadequacies in the analyses and performance of the applicant. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 115, 565 n.29 (1983), citing, Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807 (1983), review denied, CLI-83-32, 18 NRC 1309 (1983).

2.9.9.1 Burden of Proof

A licensee generally bears the ultimate burden of proof. Metropolitan Edison Co. (Three Mile Island Nuclear Station,

Unit 1), ALAB-697, 16 NRC 1265, 1271 (1982), citing, 10 CFR § 2.732. But intervenors must give some basis for further inquiry. Three Mile Island, supra, 16 NRC at 1271, citing, Pennsylvania Power and Light Co. and Alleghany Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 340 (1980). See Section 3.7.

An intervenor has the burden of going forward with respect to issues raised by his contentions. Philadelphia Electric Co. (Limerick Generating Station, Units 1 & 2), ALAB-262, 1 NRC 163, 191 (1975); Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 388-89 (1974). For a more detailed discussion, see Section 3.7.2.

2.9.9.2 Presentation of Evidence

2.9.9.2.1 Affirmative Presentation by Intervenor/Participants

An intervenor may not adduce affirmative evidence on an issue not raised by him unless and until he amends his contentions. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 869 n.17, reconsid. den., ALAB-252, 8 AEC 1175 (1974), aff'd, CLI-75-1, 1 NRC 1 (1975). This rule does not apply to an interested State participating under 10 CFR § 2.715(c). Such a State may produce evidence on issues not raised by it. Project Management Corp. (Clinch River Breeder Reactor), ALAB-354, 4 NRC 383, 392-93 (1976).

2.9.9.2.2 Consolidation of Intervenor Presentations

A Licensing Board, in permitting intervention, may consolidate intervenors for the purpose of restricting duplicative or repetitive evidence and argument. 10 CFR § 2.714(e). In addition, parties with substantially similar interests and contentions may be ordered to consolidate their presentation of evidence, cross-examination and participation in general pursuant to 10 CFR § 2.715a. An order consolidating the participation of one party with the others may not be appealed prior to the conclusion of the proceeding. Portland General Electric Co. (Trojan Nuclear Plant), ALAB-496, 8 NRC 308-309 (1978); Gulf States Utilities Co. (River Bend Station, Units 1 and 2), LBP-83-52A, 18 NRC 265, 272-73 (1983), citing, Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 455 (1981). See also Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-808, 21 NRC 1595, 1601 (1985).

The NRC Rules of Practice permit the consolidation of intervenors, but only where those parties have substantially the same interest that may be affected by the proceeding

and where consolidation would not prejudice the rights of any party. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-83-28, 17 NRC 987, 993 (1983).

Where intervenors have filed consolidated briefs they may be treated as a consolidated party; one intervenor may be appointed lead intervenor for purposes of coordinating responses to discovery, but discovery requests should be served on each party intervenor. It is not necessary that a contention or contentions be identified to any one of the intervening parties, so long as there is at least one contention admitted per intervenor. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-35, 14 NRC 682, 687 (1981).

The Commission has issued a policy statement relating to consolidation of intervenors and the conduct of licensing proceedings. Pursuant to that Commission guidance, consolidation should not be ordered when it will prejudice the rights of any intervenor; however, in all appropriate cases, single, lead intervenors should be designated to present evidence, conduct cross-examination, submit briefs, and propose findings of fact, conclusions of law, and argument. Except where other intervenors' interests will be prejudiced or upon a showing that the record will be incomplete, those activities should not be performed by such other intervenors. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 455 (1981).

2.9.9.3 Cross-Examination by Intervenors

An intervenor may engage in cross-examination of witnesses dealing with issues not raised by him if the intervenor has a discernible interest in resolution of those issues. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-75-1, 1 NRC 1 (1975); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 867-68 (1974); Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-85-2, 21 NRC 24, 32 (1985). Licensing Boards must carefully restrict and monitor such cross-examination, however, to avoid repetition. Prairie Island, supra, 1 NRC 1.

In general, the intervenor's cross-examination may not be used to expand the number or boundaries of contested issues. Prairie Island, supra, 8 AEC 857. For a further discussion, see Section 3.13.1.

2.9.9.4 Intervenor's Right to File Proposed Findings

An intervenor may file proposed findings with respect to all issues whether or not raised by his own contentions.

Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 863 (1974); Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-85-2, 21 NRC 24, 32 (1985).

A Board in its discretion may refuse to rule on an issue in its initial decision if the party raising the issue has not filed proposed findings of fact and conclusions of law. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981).

The right to file proposed findings of fact in an adjudication is not unlawfully abridged unless there was prejudicial error in refusing to admit the evidence that would have been the subject of the findings. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-82-11, 15 NRC 1383, 1384 (1982).

2.9.9.5 Attendance at/Participation in Prehearing Conferences/Hearings

An intervenor seeking to be excused from a prehearing conference should file a request to this effect before the conference date. Such a request should present the justification for not attending. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-488, 8 NRC 187, 190-91 (1978). For a discussion of a party's duty to attend hearings, see Section 3.6.

Where an intervenor indicates its intention not to participate in the evidentiary hearing, the intervenor may be held in default and its admitted contentions dismissed although the Licensing Board will review those contentions to assure that they do not raise serious matters that must be considered. Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), LBP-76-7, 3 NRC 156, 157 (1976).

An appropriate sanction for willful refusal to attend a Prehearing Conference is dismissal of the petition for intervention. In the alternative, an appropriate sanction is the acceptance of the truth of all statements made by the applicant or the NRC Staff at the Special Prehearing Conference. Application of that sanction would also result in dismissal. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), LBP-82-108, 16 NRC 1811, 1817 (1982).

A Licensing Board is not expected to sit idly by when parties refuse to comply with its orders. Pursuant to 10 CFR § 2.718, a Licensing Board has the power and the duty to maintain order, to take appropriate action to avoid delay and to regulate the course of the hearing and the conduct of the participants. Furthermore, pursuant

to 10 CFR § 2.707, the refusal of a party to comply with a Board order relating to its appearance at a proceeding constitutes a default for which a Licensing Board may make such orders in regard to the failure as are just. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-115, 16 NRC 1923, 1928 (1982).

A party may not be heard to complain that its rights were unjustly abridged after having purposefully refused to participate. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-115, 16 NRC 1923, 1935 (1982).

Dismissal of a party is the ultimate sanction applicable to an intervenor. On the other hand, where a party fails to carry out the responsibilities imposed by the fact of its participation in the proceeding, such a party may be found to be in default and its contentions dismissed. Consumers Power Co. (Palisades Nuclear Power Facility), LBP-82-101, 16 NRC 1594, 1595-1596 (1982), citing, Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit No. 2), LBP-76-7, 3 NRC 156 (1976).

2.9.9.6 Pleadings and Documents of Intervenors

An intervenor may not disregard an adjudicatory board's direction to file a memorandum without first seeking leave of the board. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-488, 8 NRC 187 (1978).

2.9.10 Cost of Intervention

2.9.10.1 Financial Assistance to Intervenors

The question of funding of intervenors' participation was addressed by the Commission in Nuclear Regulatory Commission (Financial Assistance to Participants in Commission Proceedings), CLI-76-23, 4 NRC 494 (1976). Therein, the Commission stated that it would not provide funding for participants in licensing, enforcement or antitrust proceedings and that it also would not provide such funding for participants in rulemaking proceedings as a general proposition, although it would attempt to provide funds for qualified GESMO participants.

Part of the basis for the Commission's determination was an opinion issued by the Comptroller General. Noting that the Commission lacks express statutory authority to provide funds, the opinion stated that the Commission might nevertheless provide funds to a participant if the Commission determines that: (1) it cannot make the necessary licensing or rulemaking determinations unless financial assistance is extended to the participant who

requires it; and (2) the funded participation is "essential" to the Commission's disposition of the issues. The Commission found that it could not make these determinations with respect to participants in licensing, enforcement, antitrust and general rulemaking proceedings. On the other hand, due to the singular importance of the GESMO proceedings, the Commission would seek to provide financial assistance to GESMO participants who applied by a specified deadline and who qualified for such assistance.

Subsequent to CLI-76-23, the Comptroller General issued an opinion on funding of intervenors in FDA proceedings. That ruling was a major shift from the opinion issued by the Comptroller General in the NRC case in that the test set out therein was not whether intervention was "essential" but whether it could "reasonably be expected to contribute substantially to a full and fair determination" of the pending matter.

In 1976, the Comptroller General issued two decisions in which he held that "funding of intervenors in the absence of specific Congressional authorization was permissible where participation by the intervenor is required by statute or intervention is necessary to assure adequate representation of opposing points of view and the intervenor is indigent or otherwise unable to bear the financial cost of participation." However, this position was overruled by the Second Circuit Court of Appeals, which held that an agency could not fund participants in its proceedings without a specific grant of authority from the Congress. Greene County Planning Board v. FPC, 559 F.2d 1227 (2d Cir. 1977), cert. denied, 434 U.S. 1086 (1978). On this basis, in part, funding for intervenors was denied in Exxon Nuclear Company, Inc. (Low Enriched Uranium Exports to EURATOM Member Nations), CLI-77-31, 6 NRC 849 (1977).

The Commission is in favor of funding intervenors but Congress has precluded such funding for fiscal year 1980. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-80-19, 11 NRC 700 and CLI-80-20, 11 NRC 705 (1980). Authorization acts for subsequent fiscal years have explicitly prohibited NRC from utilizing appropriated monies to fund intervenors. See Rochester Gas and Electric Corp. (R.E. Ginna Nuclear Plant, Unit 1), LBP-83-73, 18 NRC 1231, 1239 (1983).

A claim for funding by intervenor for past participation is precluded because the Commission has determined not to initiate a program to provide funding for intervenors. Puerto Rico Power Authority (North Coast Nuclear Plant, Unit 1), LBP-80-15, 11 NRC 765, 767-768 (1980).

Some financial assistance was made available to intervenors for procedural matters, such as free transcripts in adjudicatory proceedings on an application for a license or an amendment thereto in prior Commission rules. 10 CFR §§ 2.708(d), 2.712(f) and 2.750(c). (45 Fed. Reg. 49535, July 25, 1980). Those rules have since been amended so that procedural financial assistance is not now available.

The Commission is not empowered to expend its appropriated funds for the purpose of funding consultants to intervenors. See P.L. 97-88, Title V Section 502 [95 Stat. 1148 (1981)] and P.L. 97-276 Section 101(g) [96 Stat. 1135 (1982)]. Nor does it appear that the Commission has authority to require the utility-applicants to do so or to assess fees for that purpose where the service to be performed is for intervenors' benefit and is not one needed by the Commission to discharge its own licensing responsibilities. See Mississippi Power and Light Co. v. NRC, 601 F.2d 223 (5th Cir. 1979), cert. denied 444 U.S. 1102 (1980). See also National Cable Television Association, Inc. v. United States, 415 U.S. 336 (1978); Federal Power Commission v. New England Power Co., 415 U.S. 345 (1974); Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit No. 1), CLI-82-40, 16 NRC 1717 (1982); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1273 (1984), rev'd. in part on other gnds., CLI-85-2, 21 NRC 282 (1985); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-807, 21 NRC 1195, 1212 (1985), citing, Pub. L. No. 98-360, 98 Stat. 403 (1984). See Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-625, 13 NRC 13, 14-15 (1981).

Prior to the short-lived NRC policy of providing free transcripts to intervenors, at least one Licensing Board ordered that transcripts be provided free of charge to intervenors. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), Docket No. 50-409 (FTOL Proceeding) (Unpublished decision issued July 8, 1980).

2.9.10.2 Intervenor's Witnesses

The Appeal Board has indicated that where an intervenor would call a witness but for the intervenor's financial inability to do so, the Licensing Board may call the witness as a Board witness and authorize NRC payment of the usual witness fees and expenses. The decision to take such action is a matter of Licensing Board discretion which should be exercised with circumspection. If the Board calls such a witness as its own, it should limit

cross-examination to the scope of the direct examination. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-382, 5 NRC 603, 607-608 (1977).

2.9.11 Appeals by Intervenors

An intervenor may seek appellate redress on all issues whether or not those issues were raised by his own contentions. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 863 (1974).

2.9.12 Intervention in Remanded Proceedings

The Licensing Board was "manifestly correct" in rejecting a petition requesting intervention in a remanded proceeding where the scope of the remanded proceeding had been limited by the Commission, and the petition for intervention dealt with matters outside that scope. The Licensing Board had limited jurisdiction in the proceeding and could consider only what had been remanded to it. Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-526, 9 NRC 122, 124 n.3 (1979).

2.10 Nonparty Participation - Limited Appearance and Interested States

2.10.1 Limited Appearances in NRC Adjudicatory Proceedings

Although limited appearers are not parties to any proceeding, statements by limited appearers can serve to alert the Licensing Board and the parties to areas in which evidence may need to be adduced. Iowa Electric Light & Power Co. (Duane Arnold Energy Center), ALAB-108, 6 AEC 195, 196 n.4 (1973).

2.10.1.1 Requirements for Limited Appearance

The requirements for becoming a limited appearer are set out in 10 CFR § 2.715. Based upon that section, the requirements for limited appearances are generally within the discretion of the presiding officer in the proceeding. Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 623 (1981).

2.10.1.2 Scope/Limitations of Limited Appearances

Under 10 CFR § 2.715(a), the role of a limited appearer is restricted to making oral or written statements of his position on the issues within such limits and on such conditions as the Board may fix.

Pursuant to 10 CFR § 2.715(a), limited appearance statements may be permitted at the discretion of the presiding officer, but the person admitted may not otherwise participate in the proceeding. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI 83-25, 18 NRC 327, 333 (1983).

A limited appearance statement is not evidence and need only be taken into account by the Licensing Board to the extent that it may alert the Board or parties to areas in which evidence may need to be adduced. Iowa Electric Light & Power Co. ALAB-108, supra, (dictum).

The purpose of limited appearance statements is to alert the Licensing Board and parties to areas in which evidence may need to be adduced. Such statements do not constitute evidence, and accordingly, the Board is not obligated to discuss them in its decision. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1087 n.12 (1983), citing, 10 CFR § 2.715(a); Iowa Electric Light and Power Co. (Duane Arnold Energy Center), ALAB-108, 6 AEC 195, 196 n.4 (1973).

A person who makes a limited appearance before a Licensing Board may not appeal from that Board's decision. Metropolitan Edison Company (Three Mile Island Nuclear Generating Station, Unit 2), ALAB-454, 7 NRC 39 (1978).

2.10.2 Participation by Nonparty Interested States

Under 10 CFR § 2.715(c), an interested State may participate in a proceeding even though it is not a party. In this context, the Board must afford representatives of the interested State the opportunity to introduce evidence, interrogate witnesses and advise the Commission. In so doing, the interested State need not take a position on any of the issues. Even though a State has submitted contentions and intervened under 10 CFR § 2.714, it may participate as an "interested State" under 10 CFR § 2.715(c) on issues in the proceeding not raised by its own contentions. USERDA (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383 (1976); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-19, 15 NRC 601, 617 (1982). See also Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1079 (1982), citing, Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760 (1977). However, once a party is admitted as an interested State under Section 2.715(c), it may not reserve the right to intervene later under Section 2.714 with full party status. A petition to intervene under the provisions of the latter section must conform to the requirements

for late filed petitions. Consolidated Edison Co. of N.Y. (Indian Point, Unit No. 2) and Power Authority of the State of N.Y. (Indian Point, Unit No. 3), LBP-82-25, 15 NRC 715, 723 (1982).

A Licensing Board may require the representative of an interested State to indicate in advance of the hearing the subject matter on which it wishes to participate, but such a showing is not a prerequisite of admission under 10 CFR § 2.715(c). Indian Point, *supra*, 15 NRC at 723.

Section 2.715(c) states that the Commission shall "afford representatives of an interested State... and or agencies thereof, a reasonable opportunity to participate." Given this language, a Licensing Board is not limited to recognizing only one representative of a State. Thus the Licensing Board may admit the Attorney General of an interested State even though a State law designates another person as the State's representative. Indian Point, *supra*, 15 NRC at 719.

A State participating as an interested State may appeal an adjudicatory board's decision so that an interested State participating under 10 CFR § 2.715(c) constitutes the sole exception to the normal rule that a nonparty to a proceeding may not appeal from the decision in that proceeding. Metropolitan Edison Co. (Three Mile Island Nuclear Generating Station, Unit 2), ALAB-454, 7 NRC 39 (1978).

Section 274(1) of the Atomic Energy Act confers a right to participate in licensing proceedings on the State of location for the subject facility. However, 10 CFR § 2.715(c) of the Commission's Rules of Practice extends an opportunity to participate not merely to the State in which a facility will be located, but also to those other States that demonstrate an interest cognizable under Section 2.715(c). Exxon Nuclear Company, Inc. (Nuclear Fuel Recovery and Recycling Center), ALAB-447, 6 NRC 873 (1977). See, e.g., Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-74-32, 8 AEC 217 (1974).

Although a State seeking to participate as an "interested State" under Section 2.715(c) need not state contentions, once in the proceeding it must comply with all the procedural rules and is subject to the same requirements as parties appearing before the Board. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760 (1977). Illinois Power Co. (Clinton Power Station, Unit No. 1), LBP-82-103, 16 NRC 1603, 1615 (1982), *citing*, River Bend, *supra*, 6 NRC at 768. Nevertheless, the Commission has emphasized that the participation of an interested sovereign State, as a full party or otherwise,

is always desirable in the NRC licensing process. Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), CLI-77-25, 6 NRC 535 (1977). A State's participation may be so important that the State's desire to be a party to Commission review may be one factor to consider in determining whether the State should be permitted to participate in the Commission review, even though the State has not fully complied with the requirements for such participation. Id.

10 CFR § 2.715(c) has been amended to include counties and municipalities and agencies thereof as governmental entities in addition to States which may participate in NRC adjudicatory proceedings as "interested" government bodies.

Section 2.715(c) was also amended to more clearly delineate the participation rights of "interested" government bodies. As amended, this section provides that "interested" government bodies may introduce evidence, interrogate witnesses, advise the Commission without taking a position on any issue, file proposed findings, appeal the Licensing Board's decision, and seek review by the Commission.

The mere filing by a State of a petition to participate in an operating license application pursuant to 10 CFR § 2.715(c) as an interested State is not cause for ordering a hearing. The application can receive a thorough agency review, outside of the hearing process, absent indications of significant controverted matters or serious safety or environmental issues. Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), LBP-83-45, 18 NRC 213, 216 (1983); Duquesne Light Co. (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 426 (1984), citing, Northern States Power Co. (Tyrone Energy Park, Unit 1), CLI-80-36, 12 NRC 523, 527 (1980).

Although a State has a statutory right to a reasonable opportunity to participate in NRC proceedings, it may not seek to appeal on issues it did not participate in below, or seek remand of those issues. However, the State is given an opportunity to file a brief amicus curiae. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-583, 11 NRC 447 (1980).

A late decision by the Governor of a State to participate as representative of an interested State can be granted, but the Governor must take the proceeding as he finds it. He cannot complain of rulings made or procedural arrangements settled prior to his participation. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-600, 12 NRC 3, 8 (1980); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-13,

17 NRC 469, 471-72 (1983), citing, 10 CFR § 2.715(c); Cincinnati Gas and Electric Co. (Wm. H. Zimmer Nuclear Station), LBP-80-6, 11 NRC 148, 151 (1980.)

An interested State that has elected to litigate issues as a full party under 10 CFR § 2.714 is accorded the rights of an "interested State" under 10 CFR § 2.715(c) as to all other issues. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-9, 17 NRC 403, 407 (1983), citing, Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 392-93 (1976).

10 CFR § 2.715(c) authorizes an interested State to introduce evidence with respect to those issues on which it has not taken a position. However, at the earliest possible date in advance of the hearing, an interested State must state with reasonable specificity those subject areas, other than its own contentions, in which it intends to participate. Seabrook, supra, 17 NRC at 407.

The presiding officer may require an interested governmental entity to indicate with reasonable specificity, in advance of the hearing, the subject matters on which it desires to participate. However, once the time for identification of new issues by even a governmental participant has passed, either by schedule set by the Board or by circumstances, any new contention thereafter advanced by the governmental participant must meet the test for nontimely contentions. Long Island Lighting Co., (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1140 (1983). See e.g., Long Island Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-19, 15 NRC 601, 617 (1982).

An interested State, once admitted to a proceeding, must observe the procedural requirements applicable to other participants. Every party, however, may seek modification for good cause of time limits previously set by a Board. Moreover, good cause, by its very nature, must be an ad hoc determination based on the facts and circumstances applicable to the particular determination. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-83-26, 17 NRC 945, 947 (1983).

Although an interested State must observe applicable procedural requirements, including time limits, the facts and circumstances which would constitute good cause for extending the time available to a State may not be co-extensive with those warranting that action for another party. States need not, although they may, take a position with respect to an issue in order to participate in the resolution of that issue. Reflecting political

changes which uniquely bear upon bodies such as States, a State's position on an issue (and the degree of its participation with respect to that issue) might understandably change during the course of a Board's consideration of the issue. The Commission itself has recognized such factors, and it has permitted States to participate even where contrary to a procedural requirement which might bar another party's participation. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-83-26, 17 NRC 945, 947 (1983), citing, Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-25, 6 NRC 535 (1977); See 10 CFR § 2.715(c).

A county does not lose its right to participate as an interested governmental agency pursuant to 10 CFR § 2.715(c) because it has elected to participate as a full intervenor on specified contentions. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1139 (1983), citing, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-19, 15 NRC 601, 617 (1982).

Any governmental participant seeking to advance a late contention or issue, whether or not it be a participant already in the case or one seeking to enter, must satisfy the criteria for late-filed contentions as well as the criteria for reopening the record. Shoreham, supra, 17 NRC at 1140.

2.11 Discovery

2.11.1 Time for Discovery

Discovery begins on admitted contentions after the first prehearing conference. 10 CFR 2.740(a)(1). Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1945 (1982).

Under 10 CFR § 2.740(b)(1), there can be no formal discovery prior to the special prehearing conference provided for in Section 2.751a. In any event, a potential intervenor has no right to seek discovery prior to filing his petition to intervene. Wisconsin Electric Power Co. (Koshkonong Nuclear Plant, Units 1 & 2), CLI-74-45, 8 AEC 928 (1974); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188, reconsid. den., ALAB-110, 6 AEC 247, aff'd, CLI-73-12, 6 AEC 241 (1973). See also, BPI v. AEC, 502 F.2d 424, 428-29 (D.C. Cir. 1974). Once an intervenor has been admitted, formal discovery is limited to matters in controversy which have been admitted. 10 CFR § 2.740(b)(1). Discovery on the subject matter of a contention in a

licensing proceeding can be obtained only after the contention has been admitted to the proceeding. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1263 (1982).

A Licensing Board denied an applicant's motion for leave to commence limited discovery against persons who had filed petitions to intervene (at that point, nonparties). The Board entertained substantial doubt as to its authority to order the requested discovery, but denied the motion specifically because it found no necessity to follow that course of action. The Board discussed at length the law relating to the prohibition found in 10 CFR § 2.740(b)(1) against discovery beginning prior to the prehearing conference provided for in 10 CFR § 2.751a. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 577-584 (1978).

Applicants are entitled to prompt discovery concerning the bases of contentions, since a good deal of information is already available from the FSAR and other documents early in the course of the proceeding. Commonwealth Edison Co. (Byron Station, Units 1 and 2), LBP-81-30-A, 14 NRC 364, 369 (1981).

Under 10 CFR § 2.740(b)(1), discovery is ordinarily to be completed before the prehearing conference held pursuant to 10 CFR § 2.752, absent good cause shown. The fact that a party did not engage in prehearing discovery to obtain an expert witness' "backup" calculations does not preclude a request at trial for such information, but the Licensing Board may take into account the delay in deciding to grant such a last minute request. Illinois Power Co. (Clinton Power Station, Units 1 & 2), ALAB-340, 4 NRC 27 (1976).

The fact that late intervention has been permitted should not disrupt established discovery schedules since a tardy petitioner with no good excuse must take the proceeding as he finds it. Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273 (1975).

Under 10 CFR § 2.740(b)(1), discovery is available after a contention is admitted and may be terminated a reasonable time thereafter. Litigants are not entitled to further discovery as a matter of right with respect to information relevant to a contention which first surfaces long after discovery on that contention has been terminated. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-84-24, 19 NRC 1418, 1431-32 (1984), aff'd, ALAB-813, 22 NRC 59 (1985).

The Commission has expressly advised the Licensing Boards to see that the licensing process moves along at an expeditious pace, consistent with the demands of fairness, and the fact that a party has personal or other obligations or fewer resources than others does not relieve the party of its hearing obligations. Nor does it entitle the party to an extension of time for discovery absent a showing of good cause, as judged by the standards of 10 CFR § 2.711. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2) LBP-82-18, 15 NRC 598, 599 (1982).

Though the period for discovery may have long since terminated, a party may obtain discovery in order to support a motion to reopen a hearing provided that the party demonstrates with particularity that discovery would enable it to produce the needed materials. Vermont Yankee Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 524 (1973).

The question of Board management of discovery was addressed by the Commission in its Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 455-456, (1981). The Commission stated that in virtually all cases individual Boards should schedule an initial conference with the parties to set a general discovery schedule immediately after contentions have been admitted. A Licensing Board may establish reasonable deadlines for the completion of discovery. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-79, 18 NRC 1400, 1401 (1983), citing, Statement of Policy, supra, 13 NRC at 456. Although a Board may extend a discovery deadline upon a showing of good cause, a substantial delay between a discovery deadline and the start of a hearing is not sufficient, without more, to reopen discovery. Perry, supra, 18 NRC at 1401.

2.11.2 Discovery Rules

In general, the discovery rules as between all parties except the Staff follow the form of the Federal Rules of Civil Procedure. The legal authorities and court decisions pertaining to Rule 26 of the Federal Rules of Civil Procedure provide appropriate guidelines for interpreting NRC discovery rules. Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-77-13, 5 NRC 489 (1977); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-17, 17 NRC 490, 494-95 (1983), citing, Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 760 (1975).

If there is no NRC rule that parallels a Federal Rule of Civil Procedure, the Board is not restricted from applying

the Federal rule. While the Commission may have chosen to adopt only some of the Federal rules of practice to apply to all cases, it need not be inferred that the Commission intended to preclude a Licensing Board from following the guidance of the Federal rules and decisions in a specific case where there is no parallel NRC rule and where that guidance results in a fair determination of an issue. Seabrook, supra, 17 NRC at 497.

Rule 26(b)(4) differentiates between experts whom the party expects to call as witnesses and those who have been retained or specially employed by the party in preparation for trial. The Notes of Advisory Committee on Rules explain that discovery of expert witnesses is necessary, particularly in a complex case, to narrow the issues and eliminate surprise, but that purpose is not furthered by discovery of non-witness experts. Seabrook, supra, 17 NRC at 497.

In modern administrative and legal practice, including NRC practice, pretrial discovery is liberally granted to enable the parties to ascertain the facts in complex litigation, refine the issues, and prepare adequately for a more expeditious hearing or trial. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-81-25, 14 NRC 241, 243 (1981); Pacific Gas & Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-17, 17 NRC 490, 494 (1984).

A party may seek discovery of another party without the necessity of Licensing Board intervention. Where, however, discovery of a nonparty is sought (other than by deposition), the party must request the issuance of a subpoena under Section 2.720. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), ALAB-550, 9 NRC 683, 690 (1979).

Only those State agencies which are parties in NRC proceedings are required to respond to requests under 10 CFR § 2.741 for the production of documents. In order to obtain documents from non-party State agencies, a party must file a request for a subpoena pursuant to 10 CFR § 2.720. Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility), LBP-85-1, 21 NRC 11, 21-22 (1985), citing, Stanislaus, supra, 9 NRC at 683.

Applicants are entitled to discovery against intervenors in order to obtain the information necessary for applicant to meet its burden of proof. This does not amount to shifting the burden of proof to intervenors. Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 & 2), ALAB-613, 12 NRC 317, 338 (1980).

Intervenor may not directly seek settlement papers of the applicant through discovery. Rule 408 of the Federal Rules of Evidence provides that offers of settlement and conduct and statements made in the course of settlement negotiations are not admissible to prove the validity of a claim. 10 CFR § 2.759 states a policy encouraging settlement of contested proceedings and requires all parties and boards to try to carry out the settlement policy. Requiring a party to produce its settlement documents because they are settlement documents would be inconsistent with this policy. Florida Power & Light Company (St. Lucie Plant, Unit No. 2), LBP-79-4, 9 NRC 164, 183-184 (1979).

A plan to seek evidence primarily through discovery is a permissible approach for an intervenor to take. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1943 (1982).

Lack of knowledge is always an adequate response to discovery. A truthful "don't know" response is not sanctionable as a default in making discovery. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2) LBP-82-116, 16 NRC 1937, 1945, 1945 n.3 (1982).

At least one Licensing Board has held that intervenors may develop and support their contentions by getting a first round of discovery against other parties before the intervenors are required to provide responses to discovery against them. Catawba, supra, 16 NRC at 1945. But see 2.9.5.11, Northern States Power Co., (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 192, reconsid. den. ALAB-110, 6 AEC 247, aff'd, CLI-73-12, 6 AEC 241 (1973).

Discovery of the foundation upon which a contention is based is not only clearly within the realm of proper discovery, but also is necessary for an applicant's preparation for hearing. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-17, 17 NRC 490, 494 (1983).

A party's need for discovery outweighs any risk of harm from the potential release of information when the NRC Staff has indicated that no ongoing investigation will be jeopardized, when all identities and identifying information are excluded from discovery; and when all other information is discussed under the aegis of a protective order. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-83-53, 18 NRC 282, 288 (1983), reconsideration denied, LBP-83-64, 18 NRC 766, 768 (1983), affirmed, ALAB-764, 19 NRC 633 (1984).

2.11.2.1 Construction of Discovery Rules

For discovery between parties other than the Staff, the discovery rules are to be construed very liberally. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-185, 7 AEC 240 (1974); Illinois Power Co. (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1735, 1742 (1981).

Where a provision of the NRC discovery rules is similar or analogous to one of the Federal rules, judicial interpretations of that Federal rule can serve as guidance for interpreting the particular NRC rule. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 581 (1978).

2.11.2.2 Scope of Discovery

The test as to whether particular matters are discoverable is one of "general relevancy." This test will be easily satisfied unless it is clear that the evidence sought can have no possible bearing on the issues. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-185, 7 AEC 240 (1974). A party seeking discovery after the discovery period is over, however, must meet a higher standard of relevance. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 & 3), LBP-76-8, 3 NRC 199, 201 (1976). While the "general relevancy" test is fairly liberal, it does not permit the discovery of material far beyond the scope of issues to be considered in a proceeding. Thus, parties may obtain discovery only of information which is relevant to the controverted subject matter of the proceeding, as identified in the prehearing order, or which is likely to lead to the discovery of admissible evidence. This rule applies as much to Part 70 licenses for special nuclear material as to Part 50 licenses for construction of utilization facilities. Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-77-13, 5 NRC 489 (1977). Moreover, while the scope of discovery is rather broad, requests phrased in terms of "all documents..." are not favored. Illinois Power Co. (Clinton Nuclear Station, Units 1 & 2), ALA-340, 4 NRC 27 (1976).

An intervenor may obtain information about other reactors in the course of discovery. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-102, 16 NRC 1597, 1601 (1982).

In general, the discovery tools are the same as or similar to those provided for by the Federal Rules of Civil Procedure. The Commission's regulations permit depositions and requests for production of documents between intervenors and applicants without leave of the Commission and

without any showing of good cause (10 CFR §§ 2.740a, 2.741). The regulations (10 CFR § 2.740b) specifically provide for interrogatories similar to those addressed by Rule 33 of the Federal Rules, although such interrogatories are not available for use against nonparties. The scope of discovery under the Commission's Rules of Practice is similar to discovery under the Federal Rules of Civil Procedure. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978).

Section 10 CFR § 2.740(b)(1) excludes all inquiries about an applicant utility's financial standing in an operating license proceeding with regards to an applicant's financial qualifications for fulfilling its emergency planning responsibilities. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-67, 16 NRC 734, 738 (1982).

Since written answers to interrogatories under oath as provided by 10 CFR § 2.740(b) are binding upon a party and may be used in the same manner as depositions, the authority of the person signing the answers to, in fact, provide such answers may be ascertained through discovery. Statements of counsel in briefs or arguments are not sufficient to establish this authority. Pacific Gas & Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1045 (1978).

If a party has insufficient information to answer interrogatories, a statement to that effect fulfills its obligation to respond. If the party subsequently obtains additional information, it must supplement its earlier response to include such newly acquired information, 10 CFR § 2.740(c). Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-80-18, 11 NRC 906, 911 (1980).

To determine subject matter relevance for discovery purposes, it is first necessary to examine the issue involved. In an antitrust proceeding, a discovery request will not be denied where the interrogatories are relevant only to proposed antitrust license conditions and not to whether a situation inconsistent with the antitrust laws exists. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978).

At least one Licensing Board has held that, in the proper circumstances, a party's right to take the deposition of another party's expert witness may be made contingent upon the payment of expert witness fees by the party seeking to take the deposition. Public Service Co. of Oklahoma (Black Fox, Units 1 & 2), LBP-77-18, 5 NRC 671, 673 (1977).

Based on 10 CFR § 2.720(d) and § 2.740a(h), fees for subpoenas and the fee for deponents, respectively, are to be paid by the party at whose instance the subpoena was issued, and the deposition was held. Pursuant to 10 CFR § 2.740a(d), objections on questions of evidence at a deposition are simply to be noted in short form, without argument. The relief of a stay of a hearing to permit deposition of witnesses is inappropriate in the absence of any allegation of prejudice. Each party to an NRC proceeding is not required to convene its own deposition if it seeks to question a witness as to any matter beyond the scope of those issues raised on direct by the party noticing the deposition. No party has a proprietary interest in a deposition; therefore, no party has a proprietary interest in a subpoena issued to a deponent. Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit 1), LBP-82-47, 15 NRC 1538, 1544-1546 (1982).

The Licensing Board, as provided by 10 CFR § 2.740(c) and 10 CFR § 2.740(d), may and should, when not inconsistent with fairness to all parties, limit the extent or control the sequence of discovery to prevent undue delay or imposition of an undue burden on any party. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-79-8, 10 NRC 141, 147-148 (1979).

A party is only required to reveal information in its possession or control. A party need not conduct extensive independent research, although it may be required to perform some investigation to determine what information it actually possesses. Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 334 (1980).

2.11.2.3 Requests for Discovery During Hearing

Requests for background documents from a witness, to supply answers to cross-examination questions which the witness is unable to answer, cannot be denied solely because the material had not been previously requested through discovery. However, it can be denied where the request will cause significant delay in the hearing and the information sought has been substantially supplied through other testimony. Illinois Power Co. (Clinton Nuclear Station, Units 1 & 2), ALAB-340, 4 NRC 27 (1976).

2.11.2.4 Privileged Matter

As under the Federal Rules of Civil Procedure, privileged or confidential material may be protected from discovery under Commission regulations. To obtain a protective order (10 CFR § 2.740(c)), it must be demonstrated that:

- (1) the information in question is of a type customarily held in confidence by its originator;
- (2) there is a rational basis for having customarily held it in confidence;
- (3) it has, in fact, been kept in confidence; and
- (4) it is not found in public sources.

Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-327, 3 NRC 408 (1976). See also Section 6.23.3.

The claimant of a privilege must bear the burden of proving that it is entitled to such protection, including pleading it adequately in its response. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) LBP-82-82, 16 NRC 1144, 1153 (1982), citing, In re Fischel, 557 F.2d 209 (9th Cir. 1977); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-17, 17 NRC 490, 495 (1983). See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-82, 16 NRC 1144, 1153 (1982). Intervenor's mere assertion that the material it is withholding constitutes attorney work product is insufficient to meet that burden. Seabrook, supra, 17 NRC at 495.

It is not sufficient for a party asserting certain documents to be privileged from discovery to await a motion to compel from the party seeking discovery prior to the asserting party setting forth its assertions of privilege and specifying those matters which it claims to be privileged. Shoreham, supra, at 16 NRC 1153.

Pursuant to 10 CFR § 2.740(b)(1), parties may generally obtain discovery regarding any matter, not privileged, which is relevant to the subject matter in the proceeding. While the Federal Rules of Civil Procedure are not themselves directly applicable to practice before the Commission, judicial interpretations of a Federal Rule can serve as guidance for the interpretation of a similar or analogous NRC discovery rule. By choosing to model Section 2.740(b) after Federal Rule 26(b), without incorporating specific limitations, the Commission implicitly chose to adopt those privileges which have been recognized by the Federal Courts. Shoreham, supra, 16 NRC at 1157.

A party objecting to the production of documents on grounds of privilege has an obligation to specify in its response to a document request those same matters which it would be required to set forth in attempting to establish "good cause" for the issuance of a protective order, i.e., there

must be a specific designation and description of (1) the documents claimed to be privileged, (2) the privilege being asserted, and (3) the precise reasons why the party believes the privilege to apply to such documents. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-82, 16 NRC 1144, 1153 (1982); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1942 (1982).

Claims of privilege must be specifically asserted with respect to particular documents. Privileges are not absolute and may or may not apply to a particular document, depending upon a variety of circumstances. Shoreham, supra, 16 NRC at 1153, citing, United States v. El Paso Co., 682 F.2d 530, reh'g denied, 688 F.2d 840 (1982), cert. denied, 104 S. Ct. 1927 (1984); United States v. Davis, 636 F.2d 1028, 1044 n.20 (5th Cir. 1981).

In determining whether a party's inadvertent disclosure of a privileged document constitutes a waiver of the privilege, a Board will consider the adequacy of the precautions taken initially to prevent disclosure, whether the party was compelled to produce the document under a Board-imposed expedited discovery schedule, the number of documents which the party had to review, and whether the party, upon learning of the inadvertent disclosure, promptly objected to the production of the document. Kerr-McGee Chemical Corp. (West Chicao Rare Earths Facility), LBP-85-1, 21 NRC 11, 19-20 (1985).

Even where a First Amendment or common law privilege is found applicable to a party or nonparty resisting discovery, that privilege is not absolute. A Licensing Board must balance the value of the information sought to be obtained with the harm caused by revealing the information. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-83-53, 18 NRC 282, 288 (1983), reconsideration denied, LBP-83-64, 18 NRC 766, 768 (1983), aff'd, ALAB-764, 19 NRC 633, 641 (1984).

Statements from an attorney to the client are privileged only if the statements reveal, either directly or indirectly, the substance of a confidential communication by the client. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-82, 16 NRC 1144, 1158 (1982), citing, In re Fischel, 557 F.2d 209 (9th Cir. 1977); Ohio-Sealy Mattress Manufacturing Co. v. Kaplan, 90 F.R.D. 21, 28 (N.D. Ill. 1980). An attorney's involvement in, or recommendation of, a transaction does not place a cloak of secrecy around all incidents of such a transaction. Shoreham, supra, 16 NRC at 1158, citing, Fischel, 557 F.2d at 212.

The attorney-client privilege does not protect against discovery of underlying facts from their source, merely because those facts have been communicated to an attorney. Shoreham, supra, 16 NRC at 1158, citing, Upjohn Co. v. United States, 449 U.S. 383, 395 (1981).

The attorney-client privilege may not be asserted where there is a conflict of interests between various clients represented by the same attorney. There is no attorney-client relationship unless the attorney is able to exercise independent professional judgment on behalf of the interests of a client. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-84-50, 20 NRC 1464, 1468-1469 (1984), citing, Rule 1.7 of the ABA Model Rules of Professional Conduct.

A qualified work product immunity extends over material gathered or prepared by an attorney for use in litigation, either current or reasonably anticipated at a future time. Although the privilege is not easily overridden, a party may gain discovery of such material upon a showing of a substantial need for the material in the preparation of its case and an inability to obtain the material by any other means without undue hardships. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-84-50, 20 NRC 1464, 1473-1474 (1984), citing, Hickman v. Taylor, 329 U.S. 495 (1947), and 10 CFR § 2.740(b)(2).

To claim the attorney-client privilege, it must be shown that: (1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom a communication was made (a) is a member of the bar of a court, or his subordinate and (b) in connection with the communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client, (b) without the presence of strangers, (c) for the purpose of securing primarily either (i) an opinion of law or (ii) legal services or (iii) legal assistance in some legal proceeding, and (d) not for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-83-70, 18 NRC 1094, 1098 (1983), citing, United States v. United Shoe Machinery Corp., 89 F. Supp. 357, 358-59 (D. Mass. 1950).

The fact that a document is authored by in-house counsel, rather than by an independent attorney is not relevant to a determination of whether such a document is privileged. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) LBP-82-82, 16 NRC 1144, 1158 (1982), citing, O'Brien v. Board of Education of City School District of New York, 86 F.R.D. 548, 549 (S.D.N.Y. 1980).

The attorney-client privilege is only available as to communications revealing confidences of the client or seeking legal advice. Shoreham, supra, 16 NRC at 1158, citing, SCM Corp. v. Xerox Corp., 70 F.R.D. 508 (D. Conn.), interlocutory appeal dismissed, 534 F.2d 1031 (2d Cir. 1976). Even if some commonly known factual matters were included in the discussion, or non-legal advice was exchanged, where the primary purpose of a meeting was the receipt of legal advice, the entire contents thereof are protected by privilege. Midland, supra, 18 NRC at 1103, citing, Barr Marine Products Co. v. Borg-Warner Corp., 84 F.R.D. 631, 635 (E.D. Pa. 1979); United States v. United Shoe Machinery Corp., 89 F. Supp. 357, 359 (D. Mass. 1950).

An attorney's representation, that all communications between the attorney and the party were for the purpose of receiving legal advice, is sufficient for an assertion of attorney-client privilege. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-83-53, 18 NRC 282, 285 (1983), reconsideration denied, LBP-83-64, 18 NRC 766 (1983).

Communications from the attorney to the client should be privileged only if it is shown that the client had a reasonable expectation in the confidentiality of the statement; or, put another way, if the statement reflects a client communication that was necessary to obtain informed legal advice [and] which might not have been made absent the privilege. Shoreham, supra, 16 NRC at 1159, citing, Ohio-Sealy Mattress Manufacturing Co. v. Kaplan, 90 F.R.D. 21, 28 (N.D. Ill. 1980).

Where legal advice is sought from an attorney in good faith by one who is or is seeking to become a client, the fact that the attorney is not subsequently retained in no way affects the privileged nature of the communications between them. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-83-70, 18 NRC 1094 (1983).

The attorney-client privilege was not waived by the presence of third persons at a meeting between client and attorney, where the situation involved representatives of two joint clients seeking advice from the attorney of one such client about common legal problems. Midland, supra, 18 NRC at 1100.

Where the date of a meeting, its attendees, its purpose, and its broad general subject matter are revealed, the attorney-client privilege was not waived as to the substance of the meeting. Midland, supra, 18 NRC at 1102.

Under appropriate circumstances, the attorney-client privilege may extend to certain communications from employees to corporate counsel. However, not every employee who provides a privileged communication is thereby a "client" represented by corporate counsel, or a "party" to any pending legal dispute, for purposes of ABA Disciplinary Rule 7-104. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-31, 18 NRC 1303, 1305 (1983), citing, Upjohn Co. v. United States, 449 U.S. 383 (1981). Upjohn, supra, did not overturn the well-established principle that counsel should be at liberty to approach witnesses for an opposing party. Catawba, supra, 18 NRC at 1305, citing, Vega v. Bloomsburgh, 427 F. Supp. 593 (D. Mass. 1977).

Drafts of canned testimony not yet filed by a party are not subject to discovery. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), LBP-75-28, 1 NRC 513, 514 (1975).

Security plans are not "classified," and are discoverable in accordance with the provisions of 10 CFR § 2.790(d). However, they are sensitive documents and are not to be made available to the public at large. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-410, 5 NRC 1398, 1402 (1977). In order to discover such plans, (1) the moving party must demonstrate that the plan or a portion of it is relevant to the party's contentions; (2) the release of the plant security plan must usually be subject to a protective order; and (3) no witness may review the plan until he is first qualified as an expert with sufficient competence to evaluate it. Id. Only those portions of a security plan which are both relevant and necessary for the litigation of a party's contentions are subject to discovery. Id. at 1405.

An interrogatory seeking the identity and professional qualifications of persons relied upon by intervenors to review, analyze and study contentions and issues in a proceeding and to provide the bases for contentions is proper discovery. Such information is not privileged and is not a part of an attorney's work product even though the intervenor's attorney solicited the views and analyses of the persons involved and has the sole knowledge of their identity. General Electric Company (Vallecitos Nuclear Center, General Electric Test Reactor), LBP-78-33, 8 NRC 461, 464-468 (1978).

The Government enjoys a privilege to withhold from disclosure the identity of persons furnishing information about violations of law to officers charged with enforcing the law. Rovario v. United States, 353 U.S. 53, 59 (1957),

cited in Houston Power and Lighting Co. South Texas Project, Units 1 and 2), ALAB-639, 13 NRC 469, 473 (1981). This applies not only in criminal but also civil cases, In re United States, 565 F.2d 19, 21 (1977), cert. denied sub nom. Bell v. Socialist Workers Party, 436 U.S. 962 (1978), and in Commission proceedings as well, Northern States Power Co. (Monticello Plant, Unit 1), ALAB-16, 4 AEC 435, affirmed by the Commission, 4 AEC 440 (1970); 10 CFR §§ 2.744(d), 2.790(a)(7); Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), ALAB-714, 17 NRC 86, 91 (1983); and is embodied in FOIA, 5 USC 552(b)(7)(D). The privilege is not absolute; where an informer's identity is (1) relevant and helpful to the defense of an accused, or (2) essential to a fair determination of a cause (Rovario, supra) it must yield. However, the Appeal Board reversed a Licensing Board's order to the Staff to reveal the names of confidential informants (subject to a protective order) to intervenors as an abuse of discretion, where the Appeal Board found that the burden to obtain the names of such informants is not met by intervenor's speculation that identification might be of some assistance to them. To require disclosure in such a case would contravene NRC policy in that it might jeopardize the likelihood of receiving future similar reports. South Texas, supra.

There may be a limited privilege for the identity of individuals who have expressly asked or been promised anonymity in coming forward with information concerning safety-related problems at a nuclear plant. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-82-59, 16 NRC 533, 537 (1982).

Privilege to withhold the names of confidential informants is not absolute; it must yield where the informer's identity is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause. Comanche Peak, supra, 16 NRC at 537.

Even where an informer's qualified privilege exists, it will fail in light of the Board's need for the particular information in informed decisionmaking. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-82-59, 16 NRC 533, 538 (1982).

FOIA does not establish new government privileges against discovery. Consumers Power Company (Palisades Nuclear Power Facility), ALJ-80-1, 12 NRC 117, 121 (1980).

The Commission's rules on discovery have incorporated the exemptions contained in the FOIA. Id.

Section 2.790 of the Rules of Practice is the NRC's promulgation in obedience to the Freedom of Information Act. Id. at 120. The Commission, in adopting the standards of Exemption 5, and "necessary to a proper decision" as its document privilege standard under 10 CFR § 2.744(d), has adopted traditional work product/executive privilege exemptions from disclosure. Id. at 123. The Government is no less entitled to normal privilege than is any other party in civil litigation. Id. at 127.

The executive or deliberative process privilege protects from discovery governmental documents reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333, 1341 (1984), citing, Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena, 40 F.R.D. 318 (D.D.C. 1966), aff'd, 384 F.2d 979 (D.C. Cir.), cert. denied, 389 U.S. 952 (1967).

The executive privilege may be invoked in NRC proceedings. Shoreham, supra, 19 NRC at 1333, citing, Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), CLI-74-16, 7 AEC 313 (1974); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-33, 4 AEC 701 (1971).

Documents shielded by executive privilege remain privileged even after the decision to which they pertain may have been effected, since disclosure at any time could inhibit the free flow of advice including analysis, reports, and expression of opinion within the agency. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) LBP-82-82, 16 NRC 1144, 1164 (1982), citing, Federal Open Market Committee of the Federal Reserve System v. Merrill, 443 U.S. 340, 360 (1979).

The executive privilege is a qualified privilege, and does not attach to purely factual communications, or to severable factual portions of communications, the disclosure of which would not compromise military or state secrets. Shoreham, supra, 16 NRC at 1164, citing, EPA v. Mink, 410 U.S. 73, 87-88 (1973); Smith v. FTC, 403 F. Supp. 1000, 1015 (D. Del. 1975); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-72, 18 NRC 1221, 1225 (1983). The executive privilege does apply where purely factual material is inextricably intertwined with privileged communications or the disclosure of the factual material would reveal the agency's decisionmaking process. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333, 1342 (1984), citing, Russell v. Dep't of the Air Force, 682 F.2d 1045, 1048 (D.C. Cir. 1982).

The executive privilege protects both intra-agency and inter-agency documents and may even extend to outside consultants to an agency. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333, 1346 (1984), citing, Lead Industries Ass'n v. OSHA, 610 F.2d 70, 83 (2d Cir. 1979).

Communications that fall within the protection of the privilege may be disclosed upon an appropriate showing of need. Shoreham, supra, 16 NRC at 1164, citing, United States v. Leggett and Platt, Inc., 542 F.2d 655, 658-659 (6th Cir. 1976), cert. denied, 430 U.S. 945 (1977); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-72, 18 NRC 1221, 1225 (1983); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333, 1341 (1984), citing, Carl Zeiss Stiftung, supra, 40 F.R.D. at 327.

In determining the need of a litigant seeking the production of documents covered by the executive privilege, an objective balancing test is employed, weighing the importance of documents to the party seeking their production and the availability elsewhere of the information contained in the documents against the Government interest in secrecy. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) LBP-82-82, 16 NRC 1144, 1164-1165 (1982), citing, United States v. Leggett and Platt, Inc., 542 F.2d 655, 658-659 (6th Cir. 1976), cert. denied, 430 U.S. 945 (1977); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-72, 18 NRC 1221, 1225 (1983); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333, 1341 (1984).

The burden is upon the claimant of the executive privilege to demonstrate a proper entitlement to exemption from disclosure, including a demonstration of precise and certain reasons for preserving the confidentiality of governmental communications. Shoreham, supra, 16 NRC at 1144, 1165, citing, Smith v. FTC, 403 F. Supp. 1000, 1016 (D. Del 1975); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333, 1341 (1984).

It is appropriate to look to cases decided under Exemption 5 of the FOIA for guidance in resolving claims of executive privilege in NRC proceedings related to discovery, so long as it is done using a common-sense approach which recognizes any differing equities presented in such FOIA cases. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) LBP-82-82, 16 NRC 1144, 1163-1164 (1982).

A claim of executive privilege is not waived by participation as a litigant in the proceeding. Shoreham, supra, 16 NRC at 1164.

The privilege against disclosure of intragovernment documents containing advisory opinions, recommendations and deliberations is a part of the broader executive privilege recognized by the courts. Shoreham, supra, 16 NRC at 1164, citing, United States v. Nixon, 418 U.S. 683, 705-711 (1974); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-72, 18 NRC 1221, 1226-1227 (1983).

The executive privilege is not limited to policymaking, but may attach to the deliberative process that precedes most decisions of government agencies. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333, 1341 (1984), citing, Russell v. Dep't of the Air Force, 682 F.2d 1045, 1047 (D.C. Cir. 1982).

The purpose behind the privilege is to encourage frank discussions within the Government regarding the formulation of policy and the making of decisions. Shoreham, supra, 16 NRC at 1164, citing, United States v. Berrigan, 482 F.2d 171, 181 (3rd Cir. 1973).

2.11.2.5 Protective Orders

In using protected information, "those subject to the protective order may not corroborate the accuracy (or inaccuracy) of outside information by using protected information gained through the hearing process." Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-600, 12 NRC 3, 6 (1980).

An affidavit in support of a corporation's request for a protective order is insufficient where it does not establish the basis for the affiant's personal knowledge (if any) respecting the basis for the protective order -- that is, the policies and practices of the corporation with regard to preserving the confidentiality of information said to be proprietary in nature. The Board might well disregard the affidavit entirely on the ground that it not shown to have been executed by a qualified individual. While it may not be necessary to have the chief executive officer of the company serve as affiant, there is ample warrant to require that facts pertaining to management policies and practices be presented by an official who is in a position to attest to those policies and practices (and the reasons for them) from personal knowledge. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-555, 10 NRC 23, 28

(1979). In North Anna, the Appeal Board granted a protective order request but explicitly declined to find that the corporation requesting the order had met its burden of showing that the information in question was proprietary and entitled to protection from public disclosure under the standards set forth in Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-327, 3 NRC 408 (1976). No party had objected to the order, and the Appeal Board granted the order in the interest of obtaining the requested information without untoward further delay. However, its action should not be taken as precedent for future cases in which relief might be sought from an adjudicatory board based upon affidavits containing deficiencies as described above. North Anna, supra, at 28.

Pursuant to 10 CFR § 2.740(f)(2), the Board is empowered to make a protective order as it would make upon a motion pursuant to Section 2.740(c), in ruling upon a motion to compel made in accordance with Section 2.740(f). Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) LBP-82-82, 16 NRC 1144, 1152 (1982).

In at least one instance, a Licensing Board deemed it unnecessary to act on a motion for a protective order where a timely motion to compel is not filed. In such a case, the motion for protective order will be deemed granted and the matter closed upon the expiration of the time for filing a motion to compel. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1952 (1982).

Where a demonstration has been made that the rights of association of a member of an intervenor group in the area have been threatened through the threat of compulsory legal process to defend contentions, the employment situation in the area is dependent on the nuclear industry, and there is no detriment to applicant's interests by not having the identity of individual members of petitioner publicly disclosed, the Licensing Board will issue a protective order to prevent the public disclosure of the names of members of the organizational petitioner. Washington Public Power Supply System, (WPPSS Nuclear Project No. 1), LBP-83-16, 17 NRC 479, 48-586 (1983).

Licensing and Appeal Boards assume that protective orders will be obeyed unless a concrete showing to the contrary is made. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-764, 19 NRC 633, 643 n.14 (1984); see Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-83-53, 18 NRC 282, 287-88 (1983), reconsideration denied, LBP-83-64, 18 NRC 766 (1983), citing, Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-735, 18 NRC 19, 25 (1983). One who violates such orders risks "serious sanction". Midland, supra, 18 NRC at 769.

2.11.2.6 Work Product

To be privileged from discovery by the work product doctrine, as codified in 10 CFR § 2.740(b)(2), a document must be both prepared by an attorney, or by a person working at the direction of an attorney, and prepared in anticipation of litigation. Ordinary work product, which does not include the mental impressions, conclusions, legal theories or opinions of the attorney (or other agent), may be obtained by an adverse party upon a showing of "substantial need of materials in preparation of the case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means." Opinion work product is not discoverable, so long as the material was in fact prepared by an attorney or other agent in anticipation of litigation, and not assembled in the ordinary course of business, or pursuant to public requirements unrelated to litigation. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) LBP-82-82, 16 NRC 1144, 1162 (1982); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-17, 17 NRC 490, 495 (1983). An intervenor's mere assertion that the material it is withholding constitutes attorney work product is insufficient to meet the burden of proving it is entitled to protection from discovery. Seabrook, supra, 17 NRC at 495.

In the absence of unusual circumstances, a corporate party cannot immunize itself from otherwise proper discovery merely by using lawyers to make file searches for information required to answer an interrogatory. Houston Lighting & Power Company (South Texas Project, Units 1 & 2), LBP-79-5, 9 NRC 193, 195 (1979).

Drafts of testimony are not covered by the attorney work product privilege. Consumers Power Co. (Midland Plants, Units 1 and 2), LBP-81-63, 14 NRC 1768, 1793-1794 (1981).

2.11.2.7 Updating Discovery Responses

The requirements for updating discovery responses are set forth in 10 CFR § 2.740(e). Generally, a response that was accurate and complete when made need not be updated to include later acquired information with certain exceptions set forth in Section 2.740(e). Of course, an adjudicatory board may impose the duty to supplement responses beyond that required by the regulations. 10 CFR § 2.740 (e)(3).

2.11.2.8 Interrogatories

Interrogatories must have at least general relevancy, for discovery purposes, to the matter in controversy. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-81-25, 14 NRC 241, 243 (1981).

Interrogatories will not be rejected solely on the number of questions. Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 330-335 (1980). However, Licensing Boards may limit the number of interrogatories in accordance with the Commission's rules. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 455-456 (1981).

Numbers alone do not determine the propriety of interrogatories. While a Board is authorized to impose a limit on interrogatories, the rules do not do so of their own force. In the absence of specific objections there is no occasion to review the propriety of interrogatories individually. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1941 (1982).

An intervenor must come forward with evidence "sufficient to require reasonable minds to inquire further" to insure that its contentions are explored at the hearing. Interrogatories designed to discover what, if any, evidence underlies an intervenor's own contentions are not out of order. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1942 (1982).

Interrogatories served to determine the "regulatory basis" or "legal theory" for a contention are appropriate and important. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1946 (1982).

Answers should be complete in themselves; the interrogating party should not need to sift through documents or other materials to obtain a complete answer. Instead, a party must specify precisely which documents cited contain the desired information. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-67, 16 NRC 734, 736 (1982), citing, Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 NRC 1421, n.39 (1982); 4A Moore's Federal Practice 33.25(1) at 33-129-130 (2d ed. 1981); Martin v. Easton Publishing Co. 85 F.R.D. 312, 315 (E.D. Pa. 1980).

To the extent the interrogatory seeks to uncover and examine the foundation upon which an answer to a specific interrogatory is based, it is proper, particularly where it relates to the interrogatee's own contention. Interrogatories which inquire into the basis of a contention serve the dual purposes of narrowing the issues and preventing surprise at trial. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-17, 17 NRC 490, 493-94 (1983).

2.11.3 Discovery Against the Staff

Discovery against the Staff is on a different footing than discovery in general. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-634, 13 NRC 96, 97-98 (1981); Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 323 (1980). Discovery against the NRC Staff is not governed by the general rules but, instead, is governed by special provisions of the regulations. See, e.g., 10 CFR §§ 2.740(f)(3), 2.740a(j) and 2.741(e). Special provisions for discovery against the Staff are contained in 10 CFR § 2.720(h)(2)(i) (depositions); § 2.720(h)(2)(ii) (interrogatories); §§ 2.744, 2.790 (production of records and documents).

Depositions of named NRC Staff members may be required only upon a showing of exceptional circumstances. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-81-4, 13 NRC 216 (1981); 10 CFR § 2.720(h)(2). Factors considered in such a showing include whether: disclosure of the information is necessary to a proper decision in the proceeding; the information is not reasonably obtainable from another source; there is a need to expedite the proceeding. Id. at 223, citing, Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), CLI-74-16, 7 AEC 313 (1974).

According to provisions of 10 CFR § 2.720, interrogatories against the Staff may be enforced only upon a showing that the answers to be produced are necessary to a proper decision in the proceeding. Consumers Power Company (Palisades Nuclear Power Facility), ALJ-80-1, 12 NRC 117, 119 (1980).

Document requests against the Staff must be enforced where relevancy has been demonstrated unless production of the document is exempt under 10 CFR § 2.790. In that case, and only then, must it be demonstrated that disclosure is necessary to a proper decision in the matter. Palisades, supra.

The NRC Staff is not required to compile a list of criticisms of a proposal nor to formulate a position on them in response to an interrogatory. Consolidated Edison Co. of N.Y. (Indian Point, Unit 2), LBP-82-113, 16 NRC 1907, 1908 (1982).

FEMA (Federal Emergency Management Agency) is acting as a consultant to the NRC in emergency planning matters; therefore, its employees are entitled to limitations on discovery afforded NRC consultants by 10 CFR § 2.720(h)(2)(i). Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-61, 18 NRC 700, 701 (1983).

Provisions of the Memorandum of Understanding between FEMA and NRC qualify FEMA as an NRC consultant for purposes of 10 CFR § 2.720(h)(2)(i). Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-61, 18 NRC 700, 704 (1983).

2.11.4 Responses to Discovery Requests

It is an adequate response to any discovery request to state that the information or document requested is available in public compilations and to provide sufficient information to locate the material requested. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-79-8, 10 NRC 141, 147-148 (1979).

An applicant is entitled to prompt answers to interrogatories inquiring into the factual bases for contentions and evidentiary support for them, since intervenors are not permitted to make skeletal contentions and keep the bases for them secret. Commonwealth Edison Corp. (Byron Station, Units 1 and 2), LBP-81-52, 14 NRC 901, 903 (1981), citing, Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317 (1980).

Answers to interrogatories should be complete in themselves. The interrogating party should not need to sift through documents or other materials to obtain a complete answer. Commonwealth Edison Co. (Byron Nuclear Power Stations, Units 1 and 2), ALAB-678, 15 NRC 1400, 1421 at n.39 (1982), citing, 4A Moore's Federal Practice 33.25(1) at 33-129-130 (2d ed. 1981).

10 CFR § 2.740(b)(1) provides in part that:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding ... including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

Answers to interrogatories or requests for documents which do not comply with this provision are inadequate. Illinois Power Co. (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1735, 1737-1738 (1981).

Pursuant to 10 CFR § 2.741(d), a party upon whom a request for the production of documents is served is required to serve, within 30 days, a written response stating either that the requested inspection will be permitted or stating

its reasons for objecting to the request. A response must state, with respect to each item or category, either that inspection will be permitted or that the request is objectionable for specific reasons. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-82, 16 NRC 1144, 1152 (1982).

A request for documents should not be deemed objectionable solely because there might be some burden attendant to their production. Shoreham, supra, at 16 NRC 1155. Pursuant to 10 CFR § 2.740(f)(1), failure to answer or respond shall not be excused on the ground that the discovery sought is objectionable unless the person or party failing to answer or respond has applied for a protective order pursuant to 10 CFR § 2.740(c). A party is not required to seek a protective order when it has, in fact responded by objecting. An evasive or incomplete answer or response shall be treated as a failure to answer or respond. Shoreham, supra, at 16 NRC 1152.

Where intervenors have filed consolidated briefs they may be treated as a consolidated party; one intervenor may be appointed lead intervenor for purposes of coordinating responses to discovery, but discovery requests should be served on each party intervenor. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-35, 14 NRC 682, 687-688 (1981).

The involvement of a party's attorneys in litigation or other professional business does not excuse noncompliance with, nor extend deadlines for compliance with, discovery requests or other rules of practice, and is an inadequate response to a motion to compel discovery. Commonwealth Edison Co. (Byron Station, Units 1 and 2), LBP-81-30-A, 14 NRC 364, 373 (1981).

2.11.5 Compelling Discovery

Discovery can be compelled where the person against whom discovery is sought resists (See 10 CFR § 2.740(f)). Subpoenas may also issue pursuant to 10 CFR § 2.720.

In the first instance, no one appears to be immune from an order compelling discovery. The ACRS, for example, has been ordered to provide materials which it declined to provide voluntarily. Virginia Electric Power Co. (North Anna Power Station, Units 1 & 2), CLI-74-16, 7 AEC 313 (1974). Nevertheless, where discovery is resisted by a nonparty (discovery against nonparties impliedly permitted under language of 10 CFR §§ 2.720(f), 2.740(c)), a greater showing of relevance and materiality appears to be necessary, and a party seeking discovery must show that:

- (1) information sought is otherwise unavailable; and
- (2) he has minimized the burden to be placed on the nonparty.

Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-122, 6 AEC 322 (1973); Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-118, 6 AEC 263 (1973). Moreover, Licensing Boards have, on occasion, shown reluctance to enforce the discovery rules to the letter against intervenors. See, e.g., Gulf States Utilities Co. (River Bend Station, Units 1 & 2), LBP-74-74, 8 AEC 669 (1974).

Section 2.740 of the NRC's Rules of Practice, under which subpoenas are issued, is not founded upon the Commission's general rulemaking powers; rather, it rests upon the specific authority to issue subpoenas duces tecum contained in Section 161(c) of the Atomic Energy Act. Therefore, the rule of FMC v. Anglo-Canadian Shipping Company, 335 F.2d 255 (9th Cir., 1964) that agency discovery rules cannot be founded on general rulemaking powers does not come into play. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), ALAB-550, 9 NRC 683, 694 (1979).

The information sought by an administrative subpoena need only be "reasonably relevant" to the inquiry at hand. Stanislaus, supra, at 695.

Subpoenas must be issued in good faith, and pursuant to legitimate agency investigation. Metropolitan Edison Company (Three Mile Island, Unit 2), CLI-80-22, 11 NRC 724, 729 (1980).

The referral of matters to the Department of Justice for criminal proceedings, which are separate and distinct from matters covered by subpoenas issued by Director of Office of Inspection and Enforcement, does not bar Commission from pursuing its general health and safety and civil enforcement responsibilities through issuance of subpoena. Section 161(c) of Atomic Energy Act, 42 U.S.C. § 2201(c). Metropolitan Edison Company (Three Mile Island, Unit 1), CLI-80-22, 11 NRC 724, 725 (1980).

10 CFR § 2.720(a) contemplates ex parte applications for the issuance of subpoenas. Although the Chairman of the Licensing Board "may require a showing of general relevance of the testimony or evidence sought," he is not obligated to do so. The matter of relevance can be entirely deferred until such time as a motion to quash or modify the subpoena raises the question of relevance. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), ALAB-550, 9 NRC 683, 698 n.22 (1979).

Section 2.720(f) of the Rules of Practice specifically provides that a Licensing Board may condition the denial of a motion to quash or modify a subpoena duces tecum "on just and reasonable terms." That phrase is expansive enough in reach to allow the imposition of a condition that the subpoenaed person or company be reimbursed for document production costs. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), ALAB-550, 9 NRC 683, 698-699 (1979).

Generally, document production costs will not be awarded unless they are found to be not reasonably incident to the conduct of a respondent's business. Stanislaus, supra, at 702.

Under 10 CFR § 2.740 and § 2.740b, the presiding officer of a proceeding will rule upon motions to compel discovery which set forth the questions contained in the interrogatories, the responses of the party upon whom they were served, and arguments in support of the motion to compel discovery. An evasive or incomplete answer or response to an interrogatory shall be treated as a failure to answer or respond. Houston Light & Power Company (South Texas Project, Units 1 and 2), LBP-79-5, 9 NRC 193, 194-195 (1979).

Specific objections must be made to the alleged inadequacy of discrete responses. South Texas, supra, at 195.

A discovering party is entitled to direct answers or objections to each and every interrogatory posed. Objections should be plain enough and specific enough so that it can be understood in what way the interrogatories are claimed to be objectionable. General objections are insufficient. The burden of persuasion is on the objecting party to show that the interrogatory should not be answered, that the information called for is privileged, not relevant, or in some way not the proper subject of an interrogatory. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1944 (1982).

A motion to compel is required under the rules to set forth detailed bases for Board action, including arguments in support of the motion. 10 CFR § 2.740(f). This means that relief will only be granted against a party resisting further discovery when the movant gives particularized and persuasive reasons for it. Generalized claims that answers are evasive or that objections are unsubstantial will not suffice. The movant must address each interrogatory, including consideration of the objection to it, point by point. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1950 (1982).

2.11.5.1 Compelling Discovery From ACRS and ACRS Consultants

Although 10 CFR § 2.720 does not explicitly cover consultants for advisory boards like the Advisory Committee on Reactor Safeguards (ACRS), it may fairly be read to include them where they have served in that capacity. Therefore, a party seeking to subpoena consultants to the ACRS may do so but must show the existence of exceptional circumstances before the subpoenas will be issued. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-519, 9 NRC 42, 42 n.2 (1979).

2.11.5.2 Sanctions for Failure to Comply with Discovery Orders

10 CFR § 2.707 authorizes the presiding officer to impose various sanctions on a party for its failure to, among other things, comply with a discovery order. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2); LBP-83-56, 18 NRC 421, 433 (1983). Those sanctions include a finding of facts as to the matters regarding which the order was made in accordance with the claim of the party obtaining the order. Pursuant to 10 CFR § 2.707, the failure of a party to comply with a Board's discovery order constitutes a default for which a Board may make such orders in regard to the failure as are just. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-83-29A, 17 NRC 1121, 1122 (1983).

Pursuant to 10 CFR § 2.707, an intervenor can be dismissed from the proceeding for its failure to comply with discovery orders. Northern States Power Co. (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298 (1977); Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LBP-75-67, 2 NRC 813 (1975); Public Service Electric & Gas Co. (Atlantic Generating Station, Units 1 & 2), LBP-75-62, 2 NRC 702 (1975).

A licensee's motion for sanctions against an intervenor for failure to comply with discovery requests poses a three part consideration: (1) due process for the licensee; (2) due process for the intervenor; and (3) an overriding consideration of the public interest in a complete evidentiary record. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), LBP-80-17, 11 NRC 893, 897 (1980).

Counsel's allegations of certain problems as excuses for intervenor's failure to provide discovery did not justify reconsideration of the Board's imposition of sanctions for such failure, where such allegations were expressly dealt with in the Board's order compelling discovery. Nor can an intervenor challenge the sanctions on the grounds that other NRC cases involved lesser sanctions, where the intervenor has willfully and deliberately refused to supply

the evidentiary bases for its admitted contentions. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-82-5, 15 NRC 209, 213-214 (1982). See, however, ALAB-678, 15 NRC 1400 (1982), reversing the Byron Licensing Board's dismissal of intervenor for failure to comply with discovery orders on the ground that such a sanction was too severe in the circumstances.

The sanction of dismissal from an NRC licensing proceeding is to be reserved for the most severe instances of a participant's failure to meet its obligations. In selecting a sanction, Licensing Boards are to consider the relative importance of the unmet obligation; its potential harm to other parties or the orderly conduct of the proceeding; whether its occurrence is an isolated incident or a part of a pattern of behavior; the importance of the safety or environmental concerns raised by the party and all of the circumstances. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 NRC 1400 (1982), citing, Statement on Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1947 (1982); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-20A, 17 NRC 586, 590 (1983), citing, Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-719, 17 NRC 387, 392 (1983).

The refusal of any party to make its witnesses available to participate in the prehearing examinations is an abandonment of its right to present the subject witness and testimony. An intervenor's intentional waiver of both the right to cross-examine and the right to present witnesses amounts to an effective abandonment of their contention. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-115, 16 NRC 1923, 1935, 1936 (1982).

Although failure to comply with a Board order to respond to interrogatories may result in adverse findings of fact, the Board need not decide what adverse findings to adopt until action is necessary. When another procedure has been adopted requiring intervenors to shoulder the burden of going forward on a motion for summary disposition, it may be appropriate to await intervenor's filing on summary disposition, before deciding whether or not to impose sanctions for failure to respond to interrogatories pursuant to a Board order. Sanctions only will be appropriate if failure to respond prejudices applicant in the preparation of its case. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-10, 15 NRC 341, 344 (1982).

Where an intervenor has failed to comply with discovery requests and orders, the Licensing Board may alter the usual order of presentation of evidence and require an intervenor that would normally follow a licensee, to proceed with its case first. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1245 (1984), rev'd in part on other gnds, CLI-85-2, 21 NRC 282 (1985). See Northern States Power Co. Minnesota (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298, 1300-01 (1977), cited with approval in Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 338 (1980); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 188 (1978); 10 CFR § 2.731; 10 CFR Part 2, Appendix A, § V(d)(4); 5 U.S.C. § 556.

2.11.6 Appeals of Discovery Rulings

A Licensing Board order granting discovery against a third party is a final order and may be appealed; an order denying such discovery is interlocutory, and an appeal is not permitted. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-122, 6 AEC 322 (1973); Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-116, 6 AEC 258 (1973).

A discovery order entered against a nonparty is a final order and thus is appealable. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), ALAB-550, 9 NRC 683, 686 n.1 (1979); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-764, 19 NRC 633, 636 n.1 (1984).

Where a nonparty desires to appeal a discovery order against him, the proper procedure is for such person to enter a special appearance before the Licensing Board and then appeal to the Appeal Board. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-311, 3 NRC 85 (1976).

To establish reversible error from the curtailment of discovery procedures, a party must demonstrate that such curtailment made it impossible to obtain crucial evidence. Implicit in such a showing is proof that more diligent discovery was impossible. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-303, 2 NRC 858, 869 (1975). The Appeal Board has refused to review a discovery ruling referred to it by a Licensing Board when the Board below did not explain why it believed Appeal Board involvement was necessary, where the losing party had not indicated that it was unduly burdened by the ruling and where the ruling was not novel. Consumers

Power Company (Midland Plant, Units 1 & 2), ALAB-438, 6 NRC 638 (1977). The aggrieved party must make a strong showing that the impact of the discovery order upon that party or upon the public interest is indeed "unusual." Id.

Questions about the scope of discovery concern matters which are particularly within a trial board's competence and appellate review of such rulings is usually best conducted at the end of case Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 321 (1980).

TABLE OF CONTENTS

HEARINGS

3.0	HEARINGS	H 1
3.1	<u>Licensing Board</u>	H 1
3.1.1	<u>General Role of Licensing Board</u>	H 1
3.1.2	Powers/Duties of Licensing Board	H 3
3.1.2.1	Scope of Jurisdiction of Licensing Board	H 4
3.1.2.1.1	Authority in Construction Permit Proceedings Distinguished From Authority in Operating License Proceedings	H 10
3.1.2.2	Scope of Authority to Rule on Petitions and Motions	H 12
3.1.2.3	Authority of Licensing Board to Raise <u>Sua Sponte</u> Issues	H 14
3.1.2.4	Expedited Proceedings; Timing of Rulings	H 17
3.1.2.5	Licensing Board's Relationship with the NRC Staff	H 19
3.1.2.6	Licensing Board's Relationship with Other Agencies	H 23
3.1.2.7	Conduct of Hearing by Licensing Board	H 24
3.1.3	Quorum Requirements for Licensing Board Hearing	H 28
3.1.4	Disqualification of a Licensing Board Member	H 28
3.1.4.1	Motion to Disqualify Adjudicatory Board Member	H 28
3.1.4.2	Grounds for Disqualification of Adjudicatory Board Member	H 30
3.1.4.3	Improperly Influencing an Adjudicatory Board Decision	H 34
3.1.5	Resignation of a Licensing Board Member	H 34
3.2	<u>Export Licensing Hearings</u>	H 35
3.2.1	Scope of Export Licensing Hearings	H 35
3.3	<u>Hearing Scheduling Matters</u>	H 35
3.3.1	<u>Scheduling of Hearings</u>	H 35
3.3.1.1	Public Interest Requirements re Hearing Schedule	H 37
3.3.1.2	Convenience of Litigants re Hearing Schedule	H 37
3.3.1.3	Adjourned Hearings (Reserved)	H 38
3.3.2	Postponement of Hearings	H 38
3.3.2.1	Factors Considered in Hearing Postponement	H 38
3.3.2.2	Effect of Plant Deferral on Hearing Postponement	H 38
3.3.2.3	Sudden Absence of ASLB Member at Hearing	H 39
3.3.2.4	Time Extensions for Case Preparation Before Hearing	H 39
3.3.3	Scheduling Disagreements Among Parties	H 40
3.3.4	Appeals of Hearing Date Rulings	H 40
3.3.5	Location of Hearing (Reserved)	H 41
3.3.5.1	Public Interest Requirements re Hearing Location (Reserved)	H 41
3.3.5.2	Convenience of Litigants Affecting Hearing Location	H 41
3.3.6	Consolidation of Hearings	H 41
3.3.7	<u>In Camera</u> Hearings	H 42
3.4	<u>Issues for Hearing</u>	H 43
3.4.1	<u>Intervenor's Contentions</u> - Admissibility at Hearing	H 45

TABLE OF CONTENTS

HEARINGS

3.4.2	Issues Not Raised by Parties	H 48
3.4.3	Issues Not Addressed by a Party	H 49
3.4.4	Separate Hearings on Special Issues	H 50
3.4.5	Construction Permit Extension Proceedings	H 51
3.4.6	Export Licensing Proceedings Issues	H 53
3.5	<u>Summary Disposition</u> (SEE ALSO 5.8.5)	H 53
3.5.1	Use of Summary Disposition	H 56
3.5.1.1	Construction Permit Hearings	H 56
3.5.1.2	Amendments to Existing Licenses	H 56
3.5.2	Motions for Summary Disposition	H 56
3.5.2.1	Time for Filing Motions for Summary Disposition	H 58
3.5.2.2	Time for Filing Response to Summary Disposition Motion	H 59
3.5.2.3	Contents of Motions/Responses (Summary Disposition)	H 59
3.5.3	Summary Disposition Rules	H 60
3.5.4	Content of Summary Disposition Order	H 64
3.5.5	Appeals From Rulings on Summary Disposition	H 64
3.6	<u>Attendance at and Participation in Hearings</u>	H 64
3.7	<u>Burden and Means of Proof</u>	H 66
3.7.1	Duties of Applicant/Licensee	H 67
3.7.2	Intervenor's Contentions - Burden and Means of Proof	H 68
3.7.3	Specific Issues - Means of Proof	H 70
3.7.3.1	Exclusion Area Controls	H 70
3.7.3.2	Need for Facility	H 71
3.7.3.3	Burden and Means of Proof in Interim Licensing Suspension Cases	H 72
3.7.3.4	Availability of Uranium Supply	H 73
3.7.3.5	Environmental Costs (Reserved)	H 73
3.7.3.5.1	Cost of Withdrawing Farmland from Production (SEE ALSO 6.15.6.1.1)	H 73
3.7.3.6	Alternate Sites Under NEPA	H 74
3.7.3.7	Management Capability	H 74
3.8	<u>Burden of Persuasion (Degree of Proof)</u>	H 75
3.8.1	Environmental Effects Under NEPA	H 75
3.9	<u>Stipulations</u>	H 75
3.10	<u>Official Notice of Facts</u>	H 76
3.11	<u>Evidence</u>	H 77
3.11.1	Rules of Evidence	H 78
3.11.1.1	Admissibility of Evidence	H 78
3.11.1.1.1	Admissibility of Hearsay Evidence	H 79
3.11.1.2	Hypothetical Questions	H 80

TABLE OF CONTENTS

HEARINGS

3.11.1.3	Reliance On Scientific Treatises, Newspapers, Periodicals	H 80
3.11.1.4	Off-the-Record Comments	H 80
3.11.1.5	Presumptions and Inferences	H 80
3.11.1.6	Government Documents	H 81
3.11.2	Status of ACRS Letters	H 81
3.11.3	Presentation of Evidence by Intervenors	H 82
3.11.4	Evidentiary Objections	H 82
3.12	<u>Witnesses at Hearing</u>	H 82
3.12.1	<u>Compelling Appearance of Witness</u>	H 83
3.12.1.1	NRC Staff as Witnesses	H 83
3.12.1.2	ACRS Members as Witnesses	H 84
3.12.2	Sequestration of Witnesses	H 84
3.12.3	Board Witnesses	H 84
3.12.4	Expert Witnesses	H 86
3.12.4.1	Fees for Expert Witnesses	H 87
3.13	<u>Cross-Examination</u>	H 87
3.13.1	<u>Cross-Examination</u> by Intervenors	H 88
3.13.2	Cross-Examination by Experts	H 91
3.13.3	Inability to Cross-Examine as Grounds to Reopen	H 91
3.14	<u>Record of Hearing</u>	H 92
3.14.1	Supplementing Hearing Record by Affidavits	H 92
3.14.2	Reopening Hearing Record	H 92
3.14.3	Material Not Contained in Hearing Record	H 95
3.15	<u>Interlocutory Review via Directed Certification</u>	H 95
3.16	<u>Licensing Board Findings</u>	H 97
3.16.1	<u>Independent Calculations</u> by Licensing Board	H 100
3.17	<u>Res Judicata and Collateral Estoppel</u>	H 100
3.18	<u>Termination of Proceedings</u>	H 106
3.18.1	Procedures for Termination	H 106
3.18.2	Post-Termination Authority of Commission	H 106

3.0 HEARINGS

3.1 Licensing Board

3.1.1 General Role of Licensing Board

The general role of the Licensing Board is outlined in Appendix A to Part 2 of 10 CFR. In contested construction permit proceedings, the Board must make a determination as to the issues set out in 10 CFR Part 2, Appendix A, § VI(c)(1) and (3) as well as any issues raised by the parties. In an uncontested CP proceeding, the Board must make the determinations listed in 10 CFR Part 2, Appendix A, § VI(c)(2) and (3).

A Licensing Board is required to issue an initial decision in a case involving an application for a construction permit even if the proceeding is uncontested. United States Department of Energy, Project Management Corp., Tennessee Valley Authority (Clinch River Breeder Reactor Plant), ALAB-761, 19 NRC 487, 489 (1984), citing, 10 CFR § 2.104(b)(2) and (3).

In operating licensing proceedings as to radiological safety matters, the Board is to decide those issues put in controversy by the parties (10 CFR Part 2, Appendix A, § VIII(b)). In addition, the Board must require evidence and resolution of any significant safety matter of which it becomes aware regardless of whether the parties choose to put the matter in controversy. 10 CFR Part 2, Appendix A, § VIII(b). See also Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 524-25 (1973); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358, 362 (1973).

Normally, the Licensing Board is charged with compiling a factual record in a proceeding, analyzing the record, and making a determination based upon the record. The Commission will assume these functions of the Licensing Board only in extraordinary circumstances. Washington Public Power Supply System (WPSS Nuclear Project Nos. 3 & 5), CLI-77-11, 5 NRC 719, 722 (1977); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-84-8, 19 NRC 1154, 1155 (1984).

A Licensing Board is not required to do independent research or conduct de novo review of an application in a contested proceeding, but may rely upon uncontradicted Staff and Applicant evidence. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-123, 6 AEC 331, 334-35 (1973); Boston Edison Co. (Pilgrim Nuclear Power Station), ALAB-83, 5 AEC 354, (1972), aff'd, UCS v. AEC, 499 F.2d 1069 (D.C. Cir. 1974).

A Licensing Board is not merely an evidence gathering body. Rather, it has the responsibility for appraising ab initio the record developed before it and for formulating the agency's initial decision based on that appraisal. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), ALAB-78, 5 AEC 319, 322 (1972). Licensing Boards have a duty not only to resolve contested issues, but to articulate in reasonable detail the basis for the course of action chosen. A Board must do more than reach conclusions; it must confront the facts. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1087 n.12 (1983), citing, Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 41 (1977).

Licensing Boards are bound to comply with Appeal Board directives, whether they agree with them or not. The same is true with respect to Commission review of Appeal Board action and judicial review of agency action. Any other alternative would be unworkable and would unacceptably undermine the rights of the parties. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-710, 17 NRC 25, 28 (1983).

It is appropriate for the Board to address issues concerning the confidentiality of a portion of its record, regardless of whether the issue was raised by a party. Such an action is within the Board's general authority to respond to a "proposal" that a document be treated as proprietary and is not a prohibited sua sponte action of to respond to a "proposal" that a document be treated as the Board. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-5A, 15 NRC 216, 220 (1982); LBP-82-6, 15 NRC 281 (1982), and LBP-82-12, 15 NRC 354 (1982).

Where a matter has been considered by the Commission, it may not be reconsidered by a Board. Commission precedent must be followed. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-584, 11 NRC 451, 463-65 (1980).

Licensing Boards are capable of fairly judging a matter on a full record, even where the Commission has expressed tentative views. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 4-5 (1980).

A Licensing Board may conduct separate hearings on environmental, and radiological health and safety issues. Absent persuasive reasons against segmentation, contentions raising environmental questions need not be heard at the health and safety stage of a proceeding notwithstanding the fact

they may involve public health and safety considerations. Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2), LBP-80-18, 11 NRC 906, 908 (1980).

It is impractical to delay licensing proceedings to await ASME action. The responsibility of the Board is to form its own independent conclusions about licensing issues. Regulations that reference the ASME code were not intended to give over the Commission's full rulemaking authority to a private organization on an ongoing basis; nor is a private organization intended to become the authority concerning criteria necessary to the issuance of a license. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-33, 18 NRC 27, 35 (1983).

3.1.2 Powers/Duties of Licensing Board

The Licensing Board has the right and duty to develop a full record for decisionmaking in the public interest. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-82-87, 16 NRC 1195, 1199 (1982).

Licensing Boards are authorized to certify questions or refer rulings to the Appeal Board. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-83-28, 17 NRC 987, 989 n.1 (1983).

When new information is submitted to the Licensing Board, it has the responsibility to review the information and decide whether it casts sufficient doubt on the safety of a facility. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-52, 18 NRC 256, 258 (1983).

A Licensing Board is required to issue an initial decision in a case involving an application for a construction permit even if the proceeding is uncontested. United States Department of Energy, Project Management Corp., Tennessee Valley Authority (Clinch River Breeder Reactor Plant), ALAB-761, 19 NRC 487, 489 (1984), citing, 10 CFR § 2.104 (b)(2) and (3).

Although the limited work authorization and construction permit aspects of the case are simply separate phases of the same proceeding, Licensing Boards have the authority to regulate the course of the proceeding and limit an intervenor's participation to issues in which it is interested. Clinch River, *supra*, 19 NRC at 492, citing, 10 CFR §§ 2.718 and 2.714 (e) and (f).

3.1.2.1 Scope of Jurisdiction of Licensing Board

A Licensing Board has only the jurisdiction and power which the NRC delegates to it. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-316, 3 NRC 167 (1976). See also Consolidated Edison Co. of N.Y.; Power Authority of The State of N.Y. (Indian Point, Unit No. 2; Indian Point, Unit No. 3), LBP-82-23, 15 NRC 647, 649 (1982). Nevertheless, it has the power in the first instance to rule on the scope of its jurisdiction when it is challenged. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-321, 3 NRC 293, 298 (1976), aff'd, CLI-77-1, 5 NRC 1 (1977); Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit 1), LBP-83-58, 18 NRC 640, 646 (1983), citing, Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-591, 11 NRC 741, 742 (1980). Once a board determines it has jurisdiction, it is entitled to proceed directly to the merits. Zimmer, supra, 18 NRC at 646, citing, Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-597, 11 NRC 870, 873 (1980).

The effect of a Policy Statement of the Commission that deprives a Board of jurisdiction, is to prohibit that Board from inquiring into the procedural regularity of the policy statement. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-69, 16 NRC 751 (1982).

After the issuance of a Licensing Board's initial decision on a particular issue, exclusive jurisdiction over the issue lies with the Appeal Board. Section 2.717(a) of the Rules of Practice is reconcilable with 2.718(j) in that the identity of the presiding officer with exclusive jurisdiction over a particular issue changes as the proceeding moves up the appellate ladder. The parties should not be able to bestow jurisdiction on a presiding officer by selecting the tribunal for the relief sought by a motion. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-82-86, 16 NRC 1190, 1191, 1193 (1982).

Absent special circumstances, a Licensing Board may consider ab initio whether it has power to grant relief that has been specifically sought of it. Every tribunal possesses inherent rights and duties to determine in the first instance its own jurisdiction. Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-591, 11 NRC 741, 742 (1980).

A Licensing Board's jurisdiction is defined by the Commission's notice of hearing. Commonwealth Edison Company

(Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 426 (1980); Northern Indiana Public Service Company, (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 565 (1980); Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Station), LBP-79-24, 10 NRC 226, 298 (1979).

A Licensing Board does not have the jurisdiction to refer NRC examination cheaters for criminal prosecution, nor does it have authority over formulation of generic Staff procedures for administering NRC examinations. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-82-56, 16 NRC 281, 302, 372 (1982).

The NRC's regulations do not contain provisions conferring jurisdiction on Licensing Boards to impose fines *sua sponte*. The powers granted to a Licensing Board by 10 CFR § 2.718 to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order do not include the power to impose a civil penalty. 10 CFR § 2.205(a) confers the authority to institute a civil penalty proceeding only upon the NRC's Director of Nuclear Reactor Regulation, the Director of Nuclear Material Safety and Safeguards, and the Director, Office of Inspection and Enforcement. A Licensing Board becomes involved in a civil penalty proceeding only if the person charged with a violation requests a hearing. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-82-31, 16 NRC 1236, 1238 (1982); see 10 CFR § 2.205(f).

In a previously uncontested operating license proceeding, a Licensing Board has the jurisdiction to entertain a late-filed petition to intervene and to decide the issues raised by it until the Commission exercises its authority to license full power operation. The Board's jurisdiction does not terminate until the time the Commission issues a final decision or the time expires for Commission certification of record. Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), LBP-82-92, 16 NRC 1376, 1380-1381 (1982).

The five notices and orders by which authority may be delegated to a Licensing Board include an order to show cause (10 CFR § 2.202); an order calling for a hearing on imposition of civil penalties (10 CFR § 2.205(e)); a notice of hearing on an application for which a hearing must be provided (10 CFR § 2.104); a notice of opportunity for a hearing on an application not covered by 10 CFR § 2.104 (10 CFR § 2.105); and notice of opportunity for a hearing on antitrust matters (10 CFR § 2.102(d)(3)).

Where certain issues sought to be raised by an intervenor are not fairly within the scope of the issues for the proceeding as set forth in the Commission's notice of hearing, such additional issues are beyond the jurisdiction of the Licensing Board to decide. Union Electric Co. (Callaway Plant, Units 1 & 2), LBP-78-31, 8 NRC 366, 370-371 (1978).

A Licensing Board's power in a license amendment proceeding is limited by the scope of the proceeding. Thus, in considering an amendment to transfer part ownership of a facility, a Licensing Board held that questions concerning the legality of transferring some ownership interest in advance of Commission action on the amendment was outside its jurisdiction and should be pursued under the provisions of 10 CFR Part 2, subpart B (dealing with enforcement) instead. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 386 (1978).

In a license amendment proceeding, a Licensing Board has only limited jurisdiction. The Board may admit a party's issues for hearing only insofar as those issues are within the scope of matters outlined in the Commission's notice of hearing on the licensing action. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-739, 18 NRC 335, 339 (1983), citing, Portland General Electric Co. (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289 n.6 (1979) and Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976).

The Commission's delegation of authority to a Licensing Board to conduct any necessary proceedings pursuant to 10 CFR Part 2, Subpart G includes the authority to permit an applicant for a license amendment to file contentions in a hearing requested by other parties even though the applicant may have waived its own right to a hearing. There are no specific regulations which govern the filing of contentions by an applicant. However, since an applicant is a party to a proceeding, it should have the same rights as other parties to the proceeding, which include the right to submit contentions, 10 CFR § 2.714, and the right to file late contentions under certain conditions, 10 CFR § 2.714(a). Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility), LBP-84-42, 20 NRC 1296, 1305-1307 (1984).

A hearing is not mandatory on an operating license, but where a Board is convened it may look at all serious matters it deems merit further exploration. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-580, 11 NRC 227, 229-31 (1980). Where a Licensing Board has jurisdiction to consider an issue, a party to a proceeding before that Board must first seek

relief from the Board; if the Licensing Board is clearly without jurisdiction, there is no need to present the matter to it for decision. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-6, 13 NRC 443, 446 (1981), citing, Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), CLI-79-5, 9 NRC 607 (1979).

A Licensing Board for an operating license proceeding is limited to resolving matters that are raised therein as legitimate contentions by the parties or by the Board sua sponte. 10 CFR § 2.760a; Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-674, 15 NRC 1101, 1102-03 (1982), citing, Consolidated Edison Co. of N.Y. (Indian Point, Units 1, 2, & 3), ALAB-319, 3 NRC 188, 190 (1976); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-115, 16 NRC 1923, 1933 (1982), citing, 10 CFR § 2.760a; Union Electric Co. (Callaway Plant, Unit 1), ALAB-750, 18 NRC 1205, 1216 (1983). Specifically, the Board's jurisdiction is limited to a determination of findings of fact and conclusions of law on matters put into controversy by the parties to the proceeding or found by the Board to involve a serious safety, environmental or common defense and security question. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-82-117A, 16 NRC 1964, 1969-70 (1982).

There is no automatic right to adjudicatory resolution of environmental or safety questions associated with an operating license application. See Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 9 (1976). The Commission's regulations limit operating license proceedings to "matters in controversy among the parties" or matters raised on a Licensing Board's own initiative sua sponte. 10 CFR §§ 2.104(c), 2.760a. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 382 (1985).

The Licensing Board may assert jurisdiction over Part 70 material licensing issues raised in conjunction with an ongoing Part 50 licensing proceeding where the Part 70 materials license is integral to the project undergoing licensing consideration. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-84-16, 19 NRC 857, 862-65 (1984), aff'd, ALAB-765, 19 NRC 645, 650-51 (1984), citing, Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2), CLI-76-1, 3 NRC 73, 74 (1976).

A Licensing Board must carry out the instructions of the Appeal Board as long as those instructions are not countermanded by the Commission. Licensing Boards have no authority to pass judgment on the soundness of the rulings and instructions of a reviewing appellate tribunal. South Carolina Electric and Gas Co. (Virgil E. Summer Nuclear Station, Unit 1), ALAB-663, 14 NRC 1140, 1150 (1981).

When the Appeal Board remands an issue to the Licensing Board, the pendency of an appeal to the Commission from that order does not stay the effect of the order. Consumers Power Co. (Big Rock Point Plant), LBP-83-62, 18 NRC 708, 709 (1983).

If a Licensing Board believes that circumstances warrant reopening the record for receipt of additional evidence, it has discretion to take that course of action. Where the Board was faced with an insufficient record for summary disposition, and knew of a document which had not been introduced into evidence which would support summary disposition, it was not improper to request submission of the document in support of a motion for summary disposition. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 752 (1977).

A Licensing Board is empowered to reopen a proceeding at least until the issuance of its initial decision, but no later than either the filing of an appeal or the expiration of the period during which the Commission or an Appeal Board can exercise its right to review the record. See 10 CFR §§ 2.717(a), 2.760(a), 2.718(j); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-699, 16 NRC 1324, 1326, 1327 (1982); Cincinnati Gas and Electric Co. (Wm. H. Zimmer Nuclear Power Station, Unit 1), LBP-83-12, 17 NRC 466, 467 (1983); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-83-25, 17 NRC 681, 683 (1983); Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit 1), LBP-83-58, 18 NRC 640, 646 (1983), citing, Three Mile Island, supra, 16 NRC at 1324. Until an appeal to an initial decision has been filed, jurisdiction to rule on a motion to reopen lies with the Licensing Board. Philadelphia Electric Co.. (Limerick Generating Station, Units 1 and 2), ALAB-726, 17 NRC 755, 757 (1983); Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit 1), LBP-83-58, 18 NRC 640, 646 (1983). Where no appeal to an initial decision has been filed within the time allowed and the Appeal Board has neither completed its sua sponte review nor extended the time for doing so, jurisdiction to rule on a motion to reopen lies with the Licensing Board. Limerick, supra, 17 NRC at 757.

An adjudicatory board does not have jurisdiction to reopen a record with respect to an issue when finality has attached to the resolution of that issue. This conclusion is not altered by the fact that the Board has another discrete issue pending before it. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-513, 8 NRC 694, 695 (1978).

Where a Licensing Board has retained jurisdiction following issuance of initial decision to conduct further proceedings, it has jurisdiction to consider the admissibility of new contentions which are not related to any matter previously litigated. Wm. H. Zimmer, supra, 17 NRC at 467.

Pursuant to § 2.714(a), a Licensing Board is not authorized to admit conditionally, for any reason, a contention that falls short of meeting specificity requirements. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 467 (1982), vacated in part on other grounds, CLI-83-19, 17 NRC 1041 (1983).

Jurisdiction to rule on the admission of contentions, which were filed prior to final agency action and which have never been litigated, rests with the Licensing Board. Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit 1), LBP-83-58, 18 NRC 640, 646 (1983).

A Board can authorize or refuse to authorize the issuance of an operating license. It does not, however, have general jurisdiction over the already authorized on-going construction of the plant for which an operating license application is pending, and it cannot suspend such a previously issued permit. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1086 (1982), citing, Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-674, 15 NRC 1101, 1102-03 (1982).

The Staff produces, among other documents, the Safety Evaluation Report (SER) and the Draft and Final Environmental Statements (DES and FES). The studies and analyses which result in these reports are made independently by the Staff, and Licensing Boards have no rule or authority in their preparation. The Board does not have any supervisory authority over that part of the application review process that has been entrusted to the Staff. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 and 3), LBP-83-36, 18 NRC 45, 48-49 (1983), citing, New England Power Co. (NEP Units 1 and 2), LBP-78-9, 7 NRC 271 (1978). See Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 206-07 (1978).

If an intervenor cannot present his case, the proper method to institute a proceeding by which the NRC would conduct its own investigation is to request action under 10 CFR § 2.206. It is not the Board's function to assist intervenors in preparing their cases and searching for their expert witnesses. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), LBP-82-84, 16 NRC 1183, 1186 (1982).

Licensing Boards have the authority to call witnesses of their own, but the exercise of this discretion must be reasonable and like other Licensing Board rulings, is subject to appellate review. A Board may take this extraordinary action only after (1) giving the parties to the proceeding every fair opportunity to clarify and supplement their previous testimony, and (2) showing why it cannot reach an informed decision without independent witnesses. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-710, 17 NRC 25, 27-28 (1983).

Unless a Licensing Board takes action on a motion seeking reconsideration or clarification of a decision disposing of all matters before it, the Board does not retain jurisdiction normally lost, and the motion is effectively denied. Nuclear Fuel Services Inc. and New York State Energy Research and Development Authority (Western New York Nuclear Service Center), LBP-83-15, 17 NRC 476, 477 (1983).

3.1.2.1.1 Authority in Construction Permit Proceedings
Distinguished from Authority in Operating License Proceedings

A Licensing Board's powers are not coextensive with that of the Commission, but are based solely on delegations expressed or necessarily implied in regulation or in other Commission direction. A Licensing Board is not delegated authority to and cannot order a hearing in the public interest under 10 CFR § 2.104 (a). The notice constituting a construction permit Licensing Board does not provide a basis for it to order a hearing on whether an operating license should be granted. A construction permit Licensing Board's jurisdiction will usually terminate before an operating license application is filed. Thus, it probably never could be delegated authority to determine whether a hearing on the operating license application is needed in the public interest. Similarly, the general authority of a Licensing Board to condition permits or licenses provides no basis for it to initiate other adjudicatory proceedings. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18 (1980); reconsidered, ALAB-581, 11 NRC 233 (1980); modified, CLI-80-12, 11 NRC 514 (1980).

A Licensing Board is limited in the types of actions it may take in a construction permit proceeding. Although it may impose conditions on the granting of a construction permit, it may not require the applicant to submit a different application. In a review of alternate sites, for example, a Licensing Board is not authorized to suggest or select preferable alternate sites or to require the applicant to reapply for a construction permit at a specified new site. The Board may only accept or reject the site proposed in the application or accept it with certain conditions. Given the limited number of appropriate responses to a construction permit application, a Licensing Board should deny a construction permit on the grounds of availability of preferable alternate sites only when the alternate site is obviously superior to the proposed site. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503 (1977).

In operating license proceedings, as distinguished from those involving construction permits, the role of NRC adjudicatory boards is quite limited insofar as uncontested matters are concerned. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-491, 8 NRC 366, 370-71 (1978).

In Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), ALAB-381, 5 NRC 582, 589-91 (1977), the Appeal Board determined that a second Licensing Board, constituted after an initial decision in a construction permit proceeding had been issued and the jurisdiction of the original Licensing Board had terminated, lacks authority to grant a petition for untimely intervention unless specifically delegated this authority by the Commission's regulations or one of the five notices or orders discussed in Section 3.1.2.1., supra. The Appeal Board reasoned that Commission regulations providing for the automatic termination of the jurisdiction of the original Licensing Board revealed a policy for reasonable, timely termination of litigation. This policy would be frustrated if the second Licensing Board could, merely by its creation, re-activate and "inherit" the expired authority of the original Board. Since a Licensing Board has no independent authority to initiate adjudicatory proceedings (Id. at 592), and since the requisite authority was neither "inherited" nor specifically granted the second Board, that Board lacked authority to grant an untimely petition for intervention. Thus, the mere designation of a Licensing Board to entertain a petition does not in itself confer the requisite authority to grant the petition. See Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-389, 5 NRC 727 (1977). As a corollary, a Licensing Board cannot order a hearing in the absence of

a pending construction permit or operating license proceeding, or some other proceeding which might arise upon the issuance of one of the five notices or orders listed above. South Texas, supra, 5 NRC at 592; Florida Power & Light Co. (St. Lucie Plant, Units 1 & 2) (Turkey Point, Units 3 & 4), LBP-77-23, 5 NRC 789 (1977). A Licensing Board is vested with the power to dismiss an application with prejudice. See 10 CFR §§ 2.107(a), 2.721(d). Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 974 (1981).

A Licensing Board for an operating license proceeding does not have general jurisdiction over the already authorized ongoing construction of the plant for which an operating license application is pending, and it cannot suspend the previously issued construction permit. An intervenor wishing to halt such construction must file a petition under 10 CFR § 2.206 with the appropriate Commission official. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-674, 15 NRC 1101, 1103 (1982). See Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC 848, 870-871 (1984).

A Licensing Board is not authorized to order an applicant for an operating license to pursue options and alternatives to its application, such as the abandonment of an entire unit of a plant. The Board must consider the application as it has been presented. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC 848, 884 (1984).

An operating license proceeding is not intended to provide a forum for the reconsideration of matters originally within the scope of the construction permit proceeding. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-804, 21 NRC 587, 591 (1985).

In an operating license proceeding, the Commission's regulations limit an adjudicatory board's finding to the issues put into contest by the parties. See 10 CFR § 2.760a. A board is not required to make, and, under the regulations cannot properly make, the ultimate finding comparable to that required in a construction permit proceeding. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807 (1983), review denied, CLI-83-32, 18 NRC 1309 (1983).

3.1.2.2 Scope of Authority to Rule on Petitions and Motions

Merely by having been constituted, a Licensing Board has authority to entertain petitions (10 CFR § 2.714(a)). To grant a petition, however, the Licensing Board must

have been given the requisite authority specifically, either under Commission regulations or through one of the five notices or orders issued in relation to the proceeding in question.

A 10 CFR Part 70 materials license is an "order" which under 10 CFR § 2.717(b) may be "modified" by a Licensing Board delegated authority to consider a 10 CFR Part 50 operating license. Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Station), LBP-79-24, 10 NRC 226, 228 (1979).

Licensing Boards lack authority to consider a motion for an Order to Show Cause pursuant to 10 CFR §§ 2.202 and 2.206. Puerto Rico Electric Power Authority (North Coast Nuclear Plant Unit 1), LBP-80-15, 11 NRC 765, 767 (1980).

Licensing Boards also lack authority to consider claims for damages. Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), LBP-80-15, 11 NRC 765, 767 (1980).

Jurisdiction to rule on a motion to reopen filed after an appeal has been taken, rests with the Appeal Board rather than the Licensing Board. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-699, 16 NRC 1324, 1327 (1982).

In NRC proceedings in which a hearing is not mandatory but depends on the filing of a successful intervention petition, an "intervention" Licensing Board has authority only to pass upon intervention petitions. If a petition is granted, thus giving rise to a full hearing, a second Licensing Board, which may or may not be composed of the same members as the first Board, is established to conduct the hearing. Wisconsin Electric Power Company (Point Beach Nuclear Plant, Units 1 & 2), LBP-78-23, 8 NRC 71, 73 (1978); Commonwealth Edison Co. (Byron Station, Units 1 and 2), LBP-81-30-A, 14 NRC 364, 366 (1981). Thus, an "intervention" hearing board established solely for the purpose of passing on petitions to intervene does not have the additional authority to proceed beyond that assignment and to entertain filings going to the merits of matters in controversy between the petitioners and the applicant. Pacific Gas & Electric Co. (Stanislaus Nuclear Project, Unit 1), ALAB-400, 5 NRC 1175, 1177-78 (1977). An "intervention" board cannot, for example, rule on motions for summary disposition. Stanislaus, 5 NRC at 1177-1178.

A Licensing Board may entertain a request for declaratory relief. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station), ALAB-321, 3 NRC 293, 298 (1976), aff'd, CLI-77-1, 5 NRC 1 (1977). This power stems from

the fact that the Commission itself may grant declaratory relief under the APA, 5 U.S.C. § 554(e), and delegate that power to presiding officers. 5 U.S.C. § 556(c)(9). Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station), CLI-77-1, 5 NRC 1 (1977). In this vein, Licensing Boards have the authority to issue declaratory orders to terminate a controversy or remove uncertainty. Washington Public Power Supply System (WPPSS Nuclear Projects 3 & 5), LBP-77-15, 5 NRC 643 (1977).

A Licensing Board established for an operating license proceeding has authority to consider materials license questions where matters regarding a materials license bear on issues in the operating license application. Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Station), LBP-79-24, 10 NRC 226, 228 (1979).

If a Licensing Board determines that a participation agreement prohibiting the flow of electricity in interstate commerce is inconsistent with the antitrust laws, the Board may impose license conditions despite a Federal court injunction prohibiting participant from violating the agreement. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-27, 10 NRC 563, 577 (1979).

The power to grant an exemption from the regulations has not been delegated to Licensing Boards and such Boards, therefore, lack the authority to grant exemptions. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), LBP-77-35, 5 NRC 1290, 1291 (1977).

3.1.2.3 Authority of Licensing Board to Raise Sua Sponte Issues

A Licensing Board has the power to raise sua sponte any significant environmental or safety issue in operating license hearings, although this power should be used sparingly in OL cases. 10 CFR § 2.760a; Consolidated Edison Co. of N.Y., Inc. (Indian Point Nuclear Plant, Units 1, 2 & 3), ALAB-319, 3 NRC 188, 190 (1976); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-85-8, 21 NRC 516, 519 (1985). The Board's independent responsibilities under NEPA may require it to raise environmental issues not raised by a party. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-380, 5 NRC 572 (1977).

The Board has the prerogative, under the regulations, to consider raising serious issues sua sponte and the responsibility of reviewing materials filed before it to determine whether the parties have brought such an issue before. This is particularly necessary when an issue is excluded from the proceeding because it has not been

properly raised rather than because it has been rejected on its merits. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-79, 16 NRC 1116, 1119 (1982).

Pursuant to 10 CFR § 2.760a and the Commission's Memorandum dated June 30, 1981, a Licensing Board may raise a safety issue sua sponte when sufficient evidence of a serious safety matter has been presented that would prompt reasonable minds to inquire further. Very specific findings are not required since they could cause prejudgment problems. The Board need only give its reasons for raising the problem. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-81-36, 14 NRC 691, 697 (1981).

The regulations limiting the Board's authority to raise sua sponte issues restrict its right to consider safety, environmental or defense matters not raised by parties but do not restrict its responsibility to oversee the fairness and efficiency of proceedings and to raise important procedural questions on its own motion. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-24A, 15 NRC 661, 664 (1982).

Because Boards may raise important safety and environmental issues sua sponte, they should review even untimely contentions to determine that they do not raise important issues that should be considered sua sponte. Consumer Power Co. (Big Rock Point Plant), LBP-82-19B, 15 NRC 627, 631-632 (1982).

A Licensing Board's inherent power to shape the course of a proceeding should not be confused with its limited authority under 10 CFR § 2.760a to shape the issues of the proceeding. The latter is not a substitute for or a means to accomplish the former. Sua sponte authority is not a case management tool. Accordingly, the apparent need to expedite a procedure or monitor the Staff's progress in identifying and/or evaluating potential safety or environmental issues are not factors that authorize a Board to exercise its sua sponte authority. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-36, 14 NRC 1111, 1113 (1981).

The incompleteness of Staff review of an issue is not in itself sufficient to satisfy the standard for sua sponte review. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-85-8, 21 NRC 516, 519 (1985), citing, Comanche Peak, supra, 14 NRC at 1114. However, a Board may take into account the pendency and likely efficacy of NRC Staff nonadjudicatory review in determining whether or not to invoke its sua sponte review authority.

South Texas, supra, 21 NRC at 519-523, citing, Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit No. 1), CLI-82-20, 16 NRC 109 (1982), reconsideration denied, CLI-83-4, 17 NRC 75 (1983), and Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-75, 18 NRC 1254 (1983).

A Board decision to review a proposal concerning the withholding of a portion of the record from the public is an appropriate exercise of Board authority and is not subject to the sua sponte limitation on Board authority. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-5A, 15 NRC 216 (1982) and LBP-82-12, 15 NRC 354 (1982). Because exercise of this authority does not give rise to a sua sponte issue, notification of the Commission is not required.

The Board's authority to consider substantive issues is limited by the sua sponte rule, but the same limitation does not apply to its consideration of procedural matters, such as confidentiality issues arising under 10 CFR § 2.790. While it would not always be appropriate for the Board to take up proprietary matters on its own, where the Board finds the Staff's review unsatisfactory, sua sponte review of those matters may be necessary. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-6, 15 NRC 281, 288 (1982). A Board may raise a procedural question, such as whether a portion of its record should be treated as proprietary or released to the public, regardless of whether the full scope of the question has been raised by a party. Point Beach, supra.

Information that will help the Board decide whether to raise a sua sponte issue should be made available to the Board. Cleveland Electric Illuminating Power Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-9, 15 NRC 339, 340 (1982).

Board inquiries related to admitted contentions do not create sua sponte matters requiring notification of the Commission. That the Board gives advance notification to a party that related questions may be asked does not convert those questions into sua sponte issues requiring notification of the Commission. Nor is notification required when a Board has already completed action on a procedural matter and no further obligation has been imposed on a party. The sua sponte rule is intended to preclude major, substantive inquiries not related to subject matter already before the Board, not minor, procedural matters. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-12, 15 NRC 354, 356 (1982).

NRC regulations give an adjudicatory board the discretion to raise on its own motion any serious safety or environmental matter. See 10 CFR §§ 2.760a, 2.785(b)(2). This discretionary authority necessarily places on the board the burden of scrutinizing the record of an operating license proceeding to satisfy itself that no such matters exist. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807 (1983), review denied, CLI-83-32, 18 NRC 1309 (1983). See Northern States Power Co. (Monticello Nuclear Generating Plant, Unit 1), ALAB-611, 12 NRC 301, 309 (1980).

A Licensing Board may, under 10 CFR § 2.760a, raise and decide, sua sponte, a serious safety, environmental, or common defense and security matter, should it determine such a serious issue exists. The limitations imposed by regulation on a Board's review of a matter not in contest (and therefore not subject to the more intense scrutiny afforded by the adversarial process) do not override a Board's authority to invoke 10 CFR § 2.760a. The Commission may, however, on a case-by-case basis relieve the Boards of any obligation to pursue uncontested issues. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1112 and n.58 (1983), citing, Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245, 248 n.7.

3.1.2.4 Expedited Proceedings; Timing of Rulings

Licensing Boards have broad discretion regarding the appropriate time for ruling on petitions and motions filed with them. Absent clear prejudice to the petitioner from a Licensing Board's deferral of a decision on a pending motion, an Appeal Board is constrained from taking any action since the standard of review of a Licensing Board's deferral of action is whether such deferral is a clear abuse of discretion. Detroit Edison Company (Greenwood Energy Center, Units 2 & 3), ALAB-376, 5 NRC 426 (1977).

A Licensing Board has authority under 10 CFR § 2.711(a) to extend or lessen the times provided in the Rules for taking any action. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7, 13 (1980).

As a general matter, when expedition is necessary, the Commission's Rules of Practice are sufficiently flexible to permit it by ordering such steps as shortening, even drastically in some circumstances, the various time limits for the party's filings and limiting the time for, and type of, discovery. Wisconsin Electric Power Co. (Point

Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1263 (1982), citing, 10 CFR § 2.711; Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981). Procedures for expediting a proceeding, however, should not depart substantially from those set forth in the Rules of Practice, and steps to expedite a case are appropriate only upon a party's good cause showing that expedition is essential. Point Beach, supra, 16 NRC at 1263, citing, 10 CFR § 2.711.

Under extraordinary circumstances, it is appropriate for the Licensing Board to address questions to an applicant even before formal action has been completed concerning admission of an intervenor into a license amendment proceeding. These questions need not be considered sua sponte issues requiring notification of the Commission. The Board may also authorize a variety of special filings in order to expedite a proceeding and may even grant petitioners the right to utilize discovery even before they are admitted as parties. However, special sensitivity must be shown to intervenor's procedural rights when the cause for haste in a proceeding was a voluntary decision by the applicant concerning both the timing and content of its request for a license amendment. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-39, 14 NRC 819, 821, 824 (1981); LBP-81-55, 14 NRC 1017 (1981).

Under exceptional circumstances, Board questions may pre-empt discovery by the parties. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-44, 14 NRC 850, 851 (1981).

When time pressures cause special difficulties for intervenors, discovery against intervenors may be restricted in order to prevent interference with their preparation for a hearing. A presiding officer has discretionary power to authorize specially tailored proceedings in the interest of expedition. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-46, 14 NRC 862, 863 (1981).

When quick action is required on a license amendment, it is appropriate to interpret petitioner's safety concerns broadly and to admit a single broad contention that will permit wide-ranging discovery within the limited time without the need to decide repeated motions for late filing of new contentions. But the contentions must still relate to the license amendment which is requested. Petitioner may not challenge the safety of activities already permitted under the license. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-45, 14 NRC 853, 860 (1981).

Though the Board may admit a single broad contention in the interest of expedition, its liberal policy towards admissions may be rescinded when the time pressure justifying it is relieved. However, issues already raised under the liberal policy are not retroactively affected by its rescission. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-19A, 15 NRC 623, 625 (1982).

In Consolidated Edison Co. of N.Y. (Indian Point, Unit No. 2); Power Authority of the State of New York (Indian Point, Unit No. 3), LBP-82-12A, 15 NRC 515 (1982), the intervention petitioner filed a motion requesting permission to observe the emergency planning exercise scheduled to be held two days later for the Indian Point Facility. The Licensing Board ruled that, although 10 CFR § 2.741 directs that a party first seek discovery of this sort from another party and that only after a 30-day opportunity to respond can the party apply to the Board for relief, in this case, strict adherence to the rule would not be required. Where, as here, the exigencies of the case do not permit a 30-day response period, procedural delicacy will not be allowed to frustrate the purpose of the hearing -- especially where no party is seriously disadvantaged by expediting the action. Indian Point, 15 NRC at 518. Furthermore where the issue of adequacy of emergency planning was clearly an issue to be fully investigated and the observations of the potential intervenors the next day would be useful to the Board in its deliberations, the Board would deny licensee's request for stay and certification to the Commission, since to grant these motions would render the issue moot. Consolidated Edison Co. of N.Y. (Indian Point, Unit No. 2); Power Authority of the State of N.Y. (Indian Point, Unit No. 3), LBP-82-B, 15 NRC 523, 525 (1982).

3.1.2.5 Licensing Board's Relationship with the NRC Staff

A Licensing Board may not delegate its obligation to decide issues in controversy to the Staff. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-298, 2 NRC 730, 737 (1975); Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-84-2, 19 NRC 36, 210 (1984), (rev'd on other grounds, ALAB-793, 20 NRC 1591, [1984]), citing, Perry, supra, 2 NRC at 737.

The rule against delegation applies even to issues a Licensing Board raises on its own motion in an operating license proceeding. Byron, supra, 19 NRC at 211, citing, Consolidated Edison Co. of New York (Indian Point Nuclear Generating Unit 3), CLI-74-28, 8 AEC 7, 8-9 (1974). The rule against delegation applies, in particular, to quality

assurance issues. Byron, supra, 19 NRC at 212, citing, Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358 (1973). However, where there is nothing remaining to be adjudicated on a quality assurance issue, the adequacy of a 100 percent reinspection of a contractor's work may be delegated to the Staff to consider post-hearing. Byron, supra, 19 NRC at 216-17.

On the other hand, with respect to emergency planning, the Licensing Board will accept predictive findings and post-hearing verification by Staff of the formulation and implementation of aspects of emergency plans. Byron, supra, 19 NRC at 212, 251-52, citing, Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1103-04 (1983).

In a construction permit proceeding, the Licensing Board has a duty to assure that the NRC Staff's review was adequate even as to matters which are uncontested. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 774 (1977). In this vein, a more recent case reiterating the rule that a Licensing Board may not delegate its obligation to decide significant issues to the NRC Staff is Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Stations Units 1 and 2), ALAB-461, 7 NRC 313, 318 (1978).

A Licensing Board does not have the power, under 10 CFR § 2.718 or any other regulation, to direct the Staff in the performance of its independent responsibilities. New England Power Co. (NEP, Units 1 & 2), LBP-78-9, 7 NRC 271, 279-80 (1978); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1263 (1984), rev'd in part on other gnds., CLI-85-2, 21 NRC 282 (1985).

Whether a Board may modify an order or action of the Staff depends on the relationship of the order to the subject matter of a pending proceeding. If closely related, a Staff order may not be issued, or is subject to a stay until resolution of the contested issue. If far removed from the subject matter of a pending proceeding, a Staff order should not be considered by the Board. Finally, there are matters which are properly the subject of independent Staff action, but which bear enough relationship to the subject matter of a pending proceeding that review by the Licensing Board is also appropriate. Nuclear Fuel Services Inc. and N.Y. State Energy Research and Development Authority (Western New York Nuclear Service Center), LBP-82-36, 15 NRC 1075, 1082 (1982), citing, Cincinnati Gas and Electric (William H. Zimmer Nuclear Station), LBP-79-24, 10 NRC 226, 229-230 (1979).

Issues relating to NRC Staff compliance with and implementation of a Licensing Board order, rather than the order itself, should be presented to the Licensing Board in the first instance, rather than to the Appeal Board. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-684, 16 NRC 162, 165 (1982).

The docketing and review activities of the Staff are not under the supervision of the Licensing Board. Only in the most unusual circumstances should a Licensing Board interfere in the review activities of the Staff. Philadelphia Electric Company (Fulton Generating Station, Units 1 and 2), LBP-79-23, 10 NRC 220, 223-24 (1979).

The Staff produces, among other documents, the Safety Evaluation Report (SER) and the Draft and Final Environmental Statements (DES and FES). The studies and analyses which result in these reports are made independently by the Staff, and Licensing Boards have no rule or authority in their preparation. The Board does not have any supervisory authority over that part of the application review process that has been entrusted to the Staff. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 and 3), LBP-83-36, 18 NRC 45, 48-49 (1983), citing, New England Power Co. (NEP Units 1 and 2), LBP 78-9, 7 NRC 271 (1978). See Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 206-07 (1978).

The decision whether to approve a plan for construction during the period in which certain design engineering and construction management, and possibly construction responsibilities, are being transferred from one contractor to another is initially within the province of the NRC Staff. But because of the safety significance of the work to be performed, and its clear bearing on whether, or on what terms, a project should be licensed, and on the resolution of certain existing contentions, consideration of the adequacy of, and controls to be exercised by, the Applicants and NRC Staff over such work falls well within the jurisdiction of the Licensing Board. Houston Light and Power Co. (South Texas Projects, Units 1 and 2), LBP-81-54, 14 NRC 918, 919-20 (1981).

Adjudicatory boards do not possess the authority to direct the holding of hearings following the issuance of a construction permit, nor have boards been delegated the authority to direct the Staff in the performance of its administrative functions. Adjudicatory boards concerned about the conduct of the Staff's functions should bring the matter to the Commission's attention or certify the matter to the Commission. As part of its inherent supervisory authority, the Commission has the authority to direct the Staff's performance of administrative functions,

even over matters in adjudication. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), CLI-80-12, 11 NRC 514, 516-17 (1980). Ordinarily, Licensing Boards should not decide whether a given action significantly affects the environment without the record support provided by the Staff's environmental review. Consumers Power Co. (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312, 330 (1981).

Where the Licensing Board finds that the Staff cannot demonstrate a reasonable cause for its delay in submitting environmental statements, the Board may issue a ruling noting the unjustified failure to meet a publication schedule and then proceed to hear other matters or suspend proceedings until the Staff files the necessary documents. The Board, sua sponte or on motion of one of the parties, may refer the ruling to the Appeal Board. If the Appeal Board affirms, it would certify the matter to the Commission. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 207 (1978).

A Licensing Board should not call upon independent consultants to supplement an adjudicatory record except in that most extraordinary situation in which it is demonstrated that the Board cannot otherwise reach an informed decision on the issue involved. Part 2 of 10 CFR and Appendix A both give the Staff a dominant role in assessing the radiological health and safety aspects of facilities involved in licensing proceedings. Before an adjudicatory board resorts to outside experts of their own, they should give the NRC Staff every opportunity to explain, correct and supplement its testimony. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-663, 14 NRC 1140, 1146, 1156 (1981), review declined, CLI-82-10, 15 NRC 1377 (1982).

Applying the criteria of Summer, supra, 14 NRC at 1156, 1163, a Licensing Board determined that it had the authority to call an expert witness to focus on matters the Staff had apparently ignored in a motion for summary disposition of a health effects contention. Carolina Power & Light Co. and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Plant, Units 1 and 2), LBP-84-7, 19 NRC 432, 442-43 (1984), reconsid. on other grounds, LBP-84-15, 19 NRC 837, 838 (1984).

After an order authorizing the issuance of a construction permit has become final agency action, and prior to the commencement of any adjudicatory proceeding on any operating license application, the exclusive regulatory power with regard to the facility lies with the Staff. Houston Lighting & Power Co. (South Texas Project, Units

1 & 2), ALAB-381, 5 NRC 582 (1977). Under such circumstances, an adjudicatory board has no authority with regard to the facility or the Staff's regulation of it. In the same vein, after a full-term, full power operating license has been issued and the order authorizing it has become final agency action, no further jurisdiction over the license lies with any adjudicatory board. Portland General Electric Co. (Trojan Nuclear Plant), ALAB-451, 6 NRC 889, 891 n.3 (1977); Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-408, 5 NRC 1383, 1386 (1977); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 386, aff'd, ALAB-470, 7 NRC 473 (1978).

For a Licensing Board to accept unsupported NRC Staff statements would be to abrogate its ultimate responsibility and would be substituting the Staff's judgment for its own. On ultimate issues of fact, the Board must see the evidence from which to reach its own independent conclusions. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-114, 16 NRC 1909, 1916 (1982).

Should a Staff review demonstrate the need for corrective action, the decision on the adequacy of such a corrective action is one that the Licensing Board may not delegate. Case law suggests that even in cases where a Board resolves an issue in an applicant's favor leaving the Staff to perform what is believed to be a confirmatory review, the Staff should inform the Board should it discover that corrective action is warranted. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 445, 520 n.21 (1983).

3.1.2.6 Licensing Board's Relationship with Other Agencies

The requirements of State law are for State bodies to determine, and are beyond the jurisdiction of NRC adjudicatory bodies. Northern States Power Company (Tyrone Energy Park, Unit 1), ALAB-464, 7 NRC 372, 375 (1978), citing, Cleveland Electric Illuminating Co. (Perry Nuclear Plant, Units 1 & 2), ALAB-443, 6 NRC 741, 748 (1977). In this case, the Wisconsin Public Service Commission decided that some of the applicants were "foreign corporations" and could not construct the Tyrone facility. Although the Appeal Board would not question the State's ruling, it remanded the case to reconsider financial and technical qualifications in light of the changes in legal relationships of the co-applicants that resulted from the State determination. See also Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-12, 21 NRC 644, 899 (1985).

A Licensing Board does not have jurisdiction in a construction permit proceeding under the Atomic Energy Act to review the decision of the Rural Electrification Administration to guarantee a construction loan to a part owner of the facility being reviewed. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 267-68 (1978).

It would be improper for a Licensing Board to entertain a collateral attack upon any action or inaction of sister Federal agencies on a matter over which the Commission is totally devoid of any jurisdiction. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-82-117A, 16 NRC 1964, 1991 (1982).

Although the Commission will take cognizance of activities before other legal tribunals when the facts so warrant, it should not delay its licensing proceedings or withhold a license merely because some other legal tribunal might conceivably take future action which may later impact upon the operation of a nuclear facility. Palo Verde, supra, 16 NRC at 1991, citing, Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-14, 7 NRC 952, 958 n.5 (1978); Wisconsin Electric Power Co. (Koshkonong Nuclear Plant, Units 1 and 2), CLI-74-45, 8 AEC 928, 930 (1974); Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-171, 7 AEC 37, 39 (1974); and Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 748 (1977); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-12, 21 NRC 644, 900 (1985).

3.1.2.7 Conduct of Hearing by Licensing Board

The Atomic Energy Act does not itself specify the nature of the hearings required to be held pursuant to Section 189(a), 42 U.S.C. § 2239; its reference to a hearing neither distinguishes between rulemaking and adjudication nor states explicitly whether either must be conducted through formal on-the-record proceedings. However, the Commission has invariably distinguished between the two, and has provided formal hearings in licensing cases, as contrasted with informal hearings in rulemaking proceedings confined to written submissions and non-record interviews. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-107, 16 NRC 1667, 1673-74 (1982), citing, Siegel v. Atomic Energy Commission, 400 F.2d 778, 785 (D.C. Cir. 1968); Citizens For a Safe Environment v. Atomic Energy Commission, 489 F.2d 1018, 1021 (3rd Cir. 1974).

The presiding officer has the duty to conduct a fair and impartial hearing, to maintain order and to take appropriate action to avoid delay. Specific powers of the presiding officer are set forth in 10 CFR § 2.718. While the Licensing Board has broad discretion as to the manner in which a hearing is conducted, any actions pursuant to that discretion must be supported by a record that indicates that such action was based on a consideration of discretionary factors. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-463, 7 NRC 341, 356 (1978).

Pursuant to 10 CFR § 2.718, the Licensing Board has the duty to conduct a fair and impartial hearing under the law, which includes the responsibility to impose upon all parties to a proceeding the obligation to disclose all potential conflicts of interest. Fundamental fairness clearly requires disclosure of potential conflicts so as to enable the Board to determine the materiality of such information. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-73, 16 NRC 974, 979 (1982).

A Board may refer a potential conflict of interest matter to the NRC General Counsel, who is responsible for interpreting the NRC's conflict of interest rules. 10 CFR § 0.735-27. Once the matter has been handled in accordance with NRC internal procedures, a Board will not review independently either the General Counsel's determination on the matter or the judgment on whether any punitive measures are required. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-803, 21 NRC 575, 583-584 (1985).

While a Licensing Board should endeavor to conduct a licensing proceeding in a manner that takes account of special circumstances faced by any participant, the fact that a party may possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1261 n.29 (1982), citing, Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981).

The procedures set forth in the Rules of Practice are the only ones that should be used (absent explicit Commission instructions in a particular case) in any licensing proceeding. Point Beach, supra, 16 NRC at 1263, citing, 10 CFR § 2.718; 10 CFR Part 2, Appendix A.

A Board must use its powers to assure that the hearing is focused upon the matters in controversy and that the hearing process is conducted as expeditiously as possible, consistent with the development of an adequate decisional

record. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-788, 20 NRC 1102, 1152 (1984), citing, 10 CFR Part 2, Appendix A, § V. A Board may limit cross-examination, redirect a party's presentation of its case, restrict the introduction of reports and other material into evidence, and require the submittal of all or part of the evidence in written form as long as the parties are not thereby prejudiced. Shoreham, supra, 20 NRC at 1151-1154, 1178.

The scope of cross-examination and the parties that may engage in it in particular circumstances are matters of Licensing Board discretion. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-461, 7 NRC 313, 316 (1978).

A Commission-ordered discretionary proceeding before a Licensing Board held to resolve issues designated by the Commission, although adjudicatory in form, was not an "on-the-record" proceeding within the meaning of the Atomic Energy Act. Therefore, in admitting and formulating contentions and subissues and determining order of presentation, the Board would not be bound by 10 CFR Part 2. As to all other matters, 10 CFR Part 2 would control. Consolidated Edison Co. of N.Y. (Indian Point, Unit 2), Power Authority of the State of N.Y. (Indian Point, Unit 3), CLI-81-1, 13 NRC 1, 5 n.4 (1981), clarified, CLI-81-23, 14 NRC 610, 611 (1981).

In order that a proper record is compiled on all matters in controversy, as well as sua sponte issues raised by it, a hearing board has the right and responsibility to take an active role in the examination of witnesses. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 893 (1981); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-802, 21 NRC 490, 498-499 (1985). Although a Board may exercise broad discretion in determining the extent of its direct participation in the hearing, the Board should avoid excessive involvement which could prejudice any of the parties. Perry, supra, 21 NRC at 499.

The Commission has issued a Statement of Policy on the Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981), which provides guidance to Licensing Boards on the timely completion of proceedings while ensuring a full and fair record. Specific areas addressed include: scheduling of proceedings; consolidation of intervenors; negotiations by parties; discovery; settlement conferences; timely rulings; summary disposition; devices to expedite party presentations, such as pre-filed testimony outlines; round-table expert witness testimony; filing of proposed

findings of fact and conclusions of law; and scheduling to allow prompt issuance of an initial decision in cases where construction has been completed.

The Commission also outlined examples of sanctions a Licensing Board may impose on a participant in a proceeding who fails to meet its obligations. A Board can warn the offending party that its conduct will not be tolerated in the future, refuse to consider a filing by that party, deny the right to cross-examine or present evidence, dismiss one or more of its contentions, impose sanctions on its counsel, or in severe cases dismiss the party from the proceeding. In selecting a sanction, a Board should consider the relative importance of the unmet obligation, potential for harm to other parties or the orderly course of the proceedings, whether the occurrence is part of a pattern of behavior, the importance of any safety or environmental concerns raised by the party, and all of the circumstances (13 NRC 452 at 454). See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-115, 16 NRC 1923, 1928 (1982), citing, Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981).

Consistency with the Commission's Statement of Policy on Conduct of Licensing Proceedings requires that in general delay be avoided, and specifically that a Board obtain Commission guidance when it becomes apparent that such guidance will be necessary. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-21, 17 NRC 593, 604 (1983).

Pursuant to 10 CFR § 2.718, Boards may issue a wide variety of procedural orders that are neither expressly authorized nor prohibited by the rules. They may permit intervenors to contend that allegedly proprietary submissions should be released to the public. They may also authorize discovery or an evidentiary hearing that is not relevant to the contentions but is relevant to an important pending procedural issue, such as the trustworthiness of a party to receive allegedly proprietary material. However, discovery and hearings not related to contentions are of limited availability. They may be granted, on motion, if it can be shown that the procedure sought would serve a sufficiently important purpose to justify the associated delay and cost. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-2, 15 NRC 48, 53 (1982).

The Commission has inherent supervisory power over the conduct of adjudicatory proceedings, including the authority to provide guidance on the admissibility of contentions before Licensing Boards. Consolidated Edison Co. of New York (Indian Point, Unit 2); Power Authority of the State

of New York (Indian Point, Unit 3), CLI-82-15, 16 NRC 27, 34 (1982), citing, Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 516-517 (1977).

3.1.3 Quorum Requirements for Licensing Board Hearing

In Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-222, 8 AEC 229 (1974), the Appeal Board attempted to establish elaborate rules to be followed before a Licensing Board may sit with a quorum only, despite the fact that 10 CFR § 2.721(d) requires only a chairman and one technical member to be present. The Appeal Board's ruling in ALAB-222 was reviewed by the Commission in CLI-74-35, 8 AEC 374 (1974). There, the Commission held that hearings by quorum are permitted according to the terms of 10 CFR § 2.721(d) and that inflexible guidelines for invoking the quorum rule are inappropriate. At the same time, the Commission indicated that quorum hearings should be avoided wherever practicable and that absence of a Licensing Board member must be explained on the record (8 AEC 374 at 376).

3.1.4 Disqualification of a Licensing Board Member

3.1.4.1 Motion to Disqualify Adjudicatory Board Member

The rules governing motions for disqualification or recusal are generally the same for the administrative judiciary as for the judicial branch itself, and the Commission has followed that practice. Suffolk County and State of New York Motion for Disqualification of Chief Administrative Judge Cotter (Shoreham Nuclear Power Station, Unit 1), LBP-84-29A, 20 NRC 385, 386 (1984), citing, Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), CLI-82-9, 15 NRC 1363, 1366 (1982).

The general requirements for motions to disqualify are discussed in Duquesne Light Co. (Beaver Valley Power Station, Units 1 & 2), ALAB-172, 7 AEC 42 (1974). Based on that discussion and on cases dealing with related matters:

- (1) all disqualification motions must be timely filed. Commonwealth Edison Co. (LaSalle County Nuclear Power Station, Units 1 & 2), CLI-73-8, 6 AEC 169 (1973); Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-101, 6 AEC 60 (1973). In particular, any question of bias of a Licensing Board member must be raised at the earliest possible time or it is waived. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 384-386 (1974);

Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 247 (1974); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-749, 18 NRC 1195, 1198 (1983); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-751, 18 NRC 1313, 1315 (1983), reconsideration denied, ALAB-757, 18 NRC 1356 (1983); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-777, 20 NRC 21, 32 (1984). The posture of a proceeding may be considered in evaluating the timeliness of the filing of a motion for disqualification. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-84-20, 20 NRC 1061, 1081-1082 (1984); Seabrook (ALAB-757), *supra*, 18 NRC at 1361.

- (2) a disqualification motion must be accompanied by an affidavit establishing the basis for the charge, even if founded on matters of public record. Detroit Edison Co. (Greenwood Energy Center, ALAB-225, 8 AEC 379 (1974); Shoreham, *supra*, 20 NRC at 23, n.1.
- (3) a disqualification motion, as with all other motions, must be served on all parties or their attorneys. 10 CFR §§ 2.701(b), 2.730(a).

Disqualification of a Licensing Board member, either on his own motion or on motion of a party, is addressed in 10 CFR § 2.704. Strict compliance with Section 2.704(c) is required. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-630, 13 NRC 84, 86 (1981). A motion to disqualify a member of a Licensing Board is determined by the individual Board member rather than by the full Licensing Board. Public Service Electric and Gas Co. (Hope Creek Generating Station, Unit 1), ALAB-759, 19 NRC 13, 21 n.26 (1984); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-748, 18 NRC 1184, 1186 n.1 (1983), citing, Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-80-6, 11 NRC 411 (1980). In those cases where a party's motion for disqualification of a Board member is denied and the Board member does not recuse himself, Section 2.704(c) explicitly requires that the Licensing Board refer the matter to the Appeal Board or the Commission. Allens Creek, *supra* at 13 NRC 86; Nuclear Engineering Co. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-494, 8 NRC 299, 301 at n.3 (1978); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-749, 18 NRC 1195, 1198 (1983).

The Appeal Board has stressed that a party moving for disqualification of a Licensing Board member has a manifest

duty to be most particular in establishing the foundation for its charge as well as to adhere scrupulously to the affidavit requirement of 10 CFR § 2.704(c). Dairyland Power Cooperative (La Crosse Boiling Water Reactor), ALAB-497, 8 NRC 312, 313 (1978). See also Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-672, 15 NRC 677, 680 (1982).

Nevertheless, as to the affidavit requirement, the Appeal Board has held that the movant's failure to file a supporting affidavit is not crucial where the motion to disqualify is founded on a fact to which the Licensing Board itself had called attention and is particularly narrow thereby obviating the need to reduce the likelihood of an irresponsible attack on the Board member in question through use of an affidavit. Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-494, 8 NRC 299, 301 at n.3 (1978).

An intervenor's status as a party to a proceeding does not of itself give it standing to move for disqualification of a Licensing Board member on another group's behalf. Puget Sound Power and Light Company (Skagit Nuclear Power Project, Units 1 and 2), ALAB-556, 10 NRC 30, 32-33 (1979); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-748, 18 NRC 1184, 1187 (1983). However, a party requesting disqualification may attempt to establish by reference to a Board member's overall conduct that a pervasive climate of prejudice exists in which the party cannot obtain a fair hearing. A party may also attempt to demonstrate a pattern of bias by a Board member toward a class of participants of which it is a member. Seabrook, *supra*, 18 NRC at 1187-1188. See also Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-749, 18 NRC 1195, 1199 n.12 (1983).

A challenged member of an Appeal Board must first be given an opportunity to disqualify himself, before the Commission will act. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-80-9, 11 NRC 436 (1980).

3.1.4.2 Grounds for Disqualification of Adjudicatory Board Member

The aforementioned rules (3.1.4.1) with respect to motions to disqualify apply, of course, where the motion is based on the assertion that a Board member is biased. Although a Board member or the entire Board will be disqualified if bias is shown, the mere fact that a Board issued a large number of unfavorable or even erroneous rulings with respect to a particular party is not evidence of bias against that party. Northern Indiana Public Service

Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 246 (1974); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-5, 21 NRC 566, 569 (1985). Rulings and findings made in the course of a proceeding are not in themselves sufficient reasons to believe that a tribunal is biased for or against a party. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-644, 13 NRC 903, 923 (1981).

Licensing Boards are capable of fairly judging a matter on a full record, even where the Commission has expressed tentative views. Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 4-5 (1980).

Standing alone, the failure of an adjudicatory tribunal to decide questions before it with suitable promptness scarcely allows an inference that the tribunal (or a member thereof) harbors a personal prejudice against one litigant or another. Puget Sound Power and Light Company (Skagit Nuclear Power Project, Units 1 and 2), ALAB-556, 10 NRC 30, 34 (1979).

The disqualification of a Licensing Board member may not be obtained on the ground that he or she committed error in the course of the proceeding at bar or some earlier proceeding. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), ALAB-614, 12 NRC 347, 348-49 (1980).

In the absence of bias, an Appeal Board member who participated as an adjudicator in a construction permit proceeding for a facility is not required to disqualify himself from participating as an adjudicator in the operating license proceeding for the same facility. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-80-11, 11 NRC 511 (1980).

An administrative trier of fact is subject to disqualification if:

- (1) he has a direct, personal, substantial pecuniary interest in a result;
- (2) he has a personal bias against a participant;
- (3) he has served in a prosecutive or investigative role with regard to the same facts as are in issue;
- (4) he has prejudged factual - as distinguished from legal or policy-issues; or
- (5) he has engaged in conduct which gives the appearance of personal bias or prejudgment of factual issues.

Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-494, 8 NRC 299, 301 (1978); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-777, 20 NRC 21, 34 (1984), citing, Public Service Electric and Gas Co. (Hope Creek Generating Station, Unit 1), ALAB-759, 19 NRC 13, 20 (1984), quoting Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-101, 6 AEC 60, 65 (1973).

The fact that a member of an adjudicatory tribunal may have a crystalized point of view on questions of law or policy is not a basis for his or her disqualification. Shoreham, supra, 20 NRC at 34, citing, Midland, supra, 6 AEC at 66.

In its decision in Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), CLI-82-9, 15 NRC 1363, 1365-67 (1982), the Commission made clear that Licensing Board members are governed by the same disqualification standards that apply to Federal judges. Hope Creek, supra, 19 NRC at 20. The current statutory foundation for the disqualification standards is found in 28 U.S.C., Sections 144 and 455. Section 144 requires a Federal judge to step aside if a party to the proceeding files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against that party or in favor of an adverse party. Hope Creek, supra, 19 NRC at 20. Section 455(a) imposes an objective standard which is whether a reasonable person knowing all the circumstances would be led to the conclusion that the judge's impartiality might reasonably be questioned. Hope Creek, supra, 19 NRC at 21-22.

Under 28 U.S.C. § 455(b)(2), a judge must disqualify himself in circumstances where, inter alia, he served in private practice as a lawyer in the "matter in controversy." In accord with 28 U.S.C. § 455(e), disqualification in such circumstances may not be waived. Hope Creek, supra, 19 NRC at 21. In applying the disqualification standards under 28 U.S.C. § 455(b)(2), the Appeal Board concluded that, in the instance of an adjudicator versed in a scientific discipline rather than in the law, disqualification is required if he previously provided technical services to one of the parties in connection with the "matter in controversy." Hope Creek, supra, 19 NRC at 23. To determine whether the construction permit proceeding and the operating license proceeding for the same facility should be deemed the same "matter" for 28 U.S.C. § 455(b)(2) purposes, the Appeal Board adopted the "wholly unrelated" test, and found the two to be sufficiently related that the Licensing Board judge should have recused himself. Hope Creek, supra, 19 NRC at 24-25.

An administrative trier of fact is subject to disqualification for the appearance of bias or prejudgment of the factual issues as well as for actual bias or prejudgment. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-672, 15 NRC 677, 680 (1982), rev'd on other grounds, CLI-82-9, 15 NRC 1363, 1364-1365 (1982); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-5, 21 NRC 566, 568 (1985).

Disqualifying bias or prejudice of a trial judge must generally stem from an extra-judicial source even under the objective standard for recusal which requires a judge to disqualify himself in any proceeding in which his impartiality might reasonably be questioned. Preliminary assessments, made on the record, during the course of an adjudicatory proceeding, based solely upon application of the decision-maker's judgment to material properly before him in the proceeding, do not compel disqualification as a matter of law. Houston Lighting and Power Co. (South Texas Project Units 1 and 2), CLI-82-9, 15 NRC 1363, 1364-1365 (1982), citing, United States v. Grinnell Corp., 384 U.S. 563, 583 (1966); Commonwealth Edison Co. (La Salle County Nuclear Power Stations, Units 1 and 2), CLI-73-8, 6 AEC 169, 170 (1973); In Re International Business Machines Corporation, 618 F.2d 923, 929 (2d Cir. 1980); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-748, 18 NRC 1184, 1187 (1983). See also Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-749, 18 NRC 1195, 1197 (1983); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-751, 18 NRC 1313, 1315 (1983), reconsideration denied, ALAB-757, 18 NRC 1356 (1983).

The fact that a Board member's actions are erroneous, superfluous, or inappropriate does not, without more, demonstrate an extrajudicial bias. Matters are extrajudicial when they do not relate to a Board member's official duties in a case. Rulings, conduct, or remarks of a Board member in response to matters which arise in administrative proceedings are not extrajudicial. Seabrook (ALAB-749), supra, 18 NRC at 1200. See also Seabrook (ALAB-748), supra, 18 NRC at 1188.

A judge will not be disqualified on the basis of: occasional use of strong language toward a party or in expressing views on matters arising from the proceeding; or actions which may be controversial or may provoke strong reactions by parties in the proceeding. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-5, 21 NRC 566, 569 (1985).

A letter from a Board judge expressing his opinions to a judge presiding over a related criminal case did not reflect extrajudicial bias since the contents of the letter were based solely on the record developed during the NRC proceeding. The factor to consider is the source of the information, not the forum in which it is communicated. Three Mile Island, supra, 21 NRC at 569-570. Such a letter does not violate Canon 3A(6) of the Code of Judicial Conduct which prohibits a judge from commenting publicly about a pending or impending proceeding in any court. Canon 3A(6) applies to general public comment, not the transmittal of specific information by a judge to another court. Three Mile Island, supra, 21 NRC at 571. Such a letter also does not violate Canon 2B of the Code of Judicial Conduct which prohibits a judge from lending the prestige of his office to advance the private interests of others and from voluntarily testifying as a character witness. Canon 2B seeks to prevent a judge's testimony from having an undue influence in a trial. Three Mile Island, supra, 21 NRC at 570.

Membership in a national professional organization does not perforce disqualify a person from adjudicating a matter to which a local chapter of the organization is a party. Sheffield, supra, 8 NRC at 302.

3.1.4.3 Improperly Influencing an Adjudicatory Board Decision

Where a Licensing Board has been subjected to an attempt to improperly influence the content or timing of its decision, the Board is duty-bound to call attention to that fact promptly on its own initiative. On the other hand, a Licensing Board which has not been subjected to attempts at improper influence need not investigate allegations that such attempts were contemplated or promised. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 102 (1977).

3.1.5 Resignation of a Licensing Board Member

The Administrative Procedure Act requirement that the official who presides at the reception of evidence must make the recommendation or initial decision (5 U.S.C. § 554(d)) includes an exception for the circumstance in which that official becomes "unavailable to the agency." When a Licensing Board member resigns from the Commission, he becomes "unavailable" (10 CFR § 2.704(d)). Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 101 (1977). Resignation of a Board member during a proceeding is not, of itself, grounds for declaring a mistrial and starting the proceedings anew. Id. Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33

(1977) was affirmed generally and on the point cited herein in New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87 (1st Cir. 1978).

"Unavailability" of a Licensing Board member is dealt with generally in 10 CFR § 2.704(d).

3.2 Export Licensing Hearings

3.2.1 Scope of Export Licensing Hearings

The export licensing process is an inappropriate forum to consider generic safety questions posed by nuclear power plants. Under the Atomic Energy Act, as amended by the Nuclear Non-Proliferation Act of 1978, the Commission, in making its export licensing determinations, will consider non-proliferation and safeguards concerns, and not foreign health and safety matters. Westinghouse Electric Corp. (Export to South Korea), CLI-80-30, 12 NRC 253, 260-61 (1980); General Electric Co. (Exports to Taiwan), CLI-81-2, 13 NRC 67, 71 (1981).

3.3 Hearing Scheduling Matters

3.3.1 Scheduling of Hearings

An ASLB may not schedule a hearing for a time when it is known that a technical member will be unavailable for more than one half of one day unless there is no reasonable alternative to such scheduling. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-222, 8 AEC 229, 238 (1974).

Otherwise, an ASLB has general authority to regulate the course of a licensing proceeding and may schedule hearings on specific issues pending related developments on other issues. Public Service Co. of Indiana Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-371, 5 NRC 409 (1977). In deciding whether early hearings should be held on specific issues, the Board should consider:

- (1) the likelihood that early findings would retain their validity;
- (2) the advantage to the public interest and to the litigants in having early, though possibly, inconclusive, resolution of certain issues;
- (3) the extent to which early hearings on certain issues might occasion prejudice to one or more litigants, particularly in the event that such issues were later reopened because of supervening developments.

Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-277, 1 NRC 539 (1975); accord Allied-General Nuclear Services (Barnwell Nuclear Fuel Plant Separation Facility), ALAB-296, 2 NRC 671 (1975).

As a general rule, scheduling is a matter of Licensing Board discretion which will not be interfered with absent a "truly exceptional situation". Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-295, 2 NRC 668 (1975); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-293, 2 NRC 660 (1975).

Where the Licensing Board finds that the Staff cannot demonstrate a reasonable cause for its delay in submitting environmental statements, the Board may issue a ruling noting the unjustified failure to meet a publication schedule and then proceed to hear other matters or suspend proceedings until the Staff files the necessary documents. The Board, sua sponte or on motion of one of the parties, may refer the ruling to the Appeal Board. If the Appeal Board affirms, it would certify the matter to the Commission, Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 207 (1978).

While a hearing is required on a construction permit application, operating license hearings can only be triggered by petitions to intervene, or a Commission finding that such a hearing would be in the public interest. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18, 26 (1980), modified, CLI-80-12, 11 NRC 514 (1980). Licensing Boards have no independent authority to initiate adjudicatory proceedings without prior action of some other component of the Commission. 10 CFR §2.104(a) does not provide authority to a Licensing Board considering a construction permit application to order a hearing on the yet to be filed operating license application. Shearon Harris, supra, ALAB-577, 11 NRC 18, 27-28 (1980), modified, CLI-80-12, 11 NRC 514 (1980). Section 2.104(a) of the Commission's Rules of Practice contemplates determination of a need for a hearing in the public interest on an operating license, only after application for such a license is made. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18, 27-28 (1980); Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-581, 11 NRC 233 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

Generally speaking, Licensing Boards determine scheduling matters on the basis of representations of counsel about

projected completion dates, availability of necessary information, and adequate opportunities for a fair and thorough hearing. The Board would take a harder look at an applicant's projected completion date if it could only be met by a greatly accelerated schedule, with minimal opportunities for discovery and the exercise of other procedural rights. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-83-8A, 17 NRC 282, 286-87 (1983).

An Appeal Board will overturn a Licensing Board's denial of a request for a schedule change only on finding that the Board abused its discretion by setting a schedule that deprives a party of its right to procedural due process. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-719, 17 NRC 387, 391 (1983), citing, Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1260 (1982), quoting, Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 188 (1978).

3.3.1.1 Public Interest Requirements re Hearing Schedule

In matters of scheduling, the paramount consideration is the public interest. The public interest is usually served by as rapid a decision as is possible consistent with everyone's opportunity to be heard. Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-277, 1 NRC 539 (1975).

Findings under 10 CFR § 2.104(a) on a need for a public hearing on an application for an operating license in the public interest cannot be made until after such application is filed. Such finding must be based on the application and all information then available. While the Commission can determine that a hearing on an operating license is needed in the public interest, a Licensing Board could not. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18, 26-28 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

3.3.1.2 Convenience of Litigants re Hearing Schedule

Although the convenience of litigants is entitled to recognition, it cannot be dispositive on questions of scheduling. Allied General Nuclear Services (Barnwell Nuclear Fuel Plant Separations Facility), ALAB-296, 2 NRC 671, 684-685 (1975); Potomac Electric Power Co. (Douglas Point Nuclear Generating Stations, Units 1 & 2), ALAB-277, 1 NRC 539 (1975).

Nevertheless, ASLB action in keeping to its schedule despite intervenors' assertions that they were unable to prepare for cross-examination or to attend the hearing

because of a need to prepare briefs in a related matter in the U.S. Court of Appeals has been held to be an error requiring reopening of the hearing. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-249, 8 AEC 980 (1974).

3.3.1.3 Adjourned Hearings

(RESERVED)

3.3.2 Postponement of Hearings

3.3.2.1 Factors Considered in Hearing Postponement

Where there is no immediate need for the license sought, the ASLB decision as to whether to go forward with hearings or postpone them should be guided by the three factors listed in the Douglas Point case; namely:

- (1) the likelihood that findings would retain their validity;
- (2) the advantage to the public and to litigants in having early, though possibly inconclusive, resolution;
- (3) the possible prejudice arising from an early hearing.

Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-277, 1 NRC 539 (1975).

The fact that a party has failed to retain counsel in a timely manner is not grounds for seeking a delay in the commencement of hearings. Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LBP-75-67, 2 NRC 813, 816 (1975).

3.3.2.2 Effect of Plant Deferral on Hearing Postponement

The deferral of a plant which has been noticed for hearing does not necessarily mean that hearings should be postponed. At the same time, an ASLB does have authority to adjust discovery and hearing schedules in response to such deferral. Wisconsin Electric Power Co. (Koshkonong Nuclear Power Plant, Units 1 & 2), CLI-75-2, 1 NRC 39 (1975). Note also that the adjudicatory early site review procedures set forth in 10 CFR Part 2 provide a means by which separate, early hearings may be held on site suitability matters despite the fact that the proposed plant and related construction permit proceedings have been deferred.

3.3.2.3 Sudden Absence of ASLB Member at Hearing

When there is a sudden absence of a technical member, consideration of hearing postponement must be made, and if time permits, the parties' views must be solicited before a postponement decision is rendered. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-222, 8 AEC 229 (1974).

Note that in Commonwealth Edison Co. (Zion Station, Units 1 & 2), CLI-74-35, 8 AEC 374 (1974), the Commission reviewed ALAB-222. While the Commission was not in total agreement with the Appeal Board's setting of inflexible guidelines for invoking the quorum rule, it agreed in principle with the Appeal Board's view that all three ASLB members must participate to the maximum extent possible in evidentiary hearings. As such, it appears that the above guidance from ALAB-222 remains in effect.

3.3.2.4 Time Extensions for Case Preparation Before Hearing

In view of the disparity between the Staff and applicant on the one hand and intervenors on the other with regard to the time available for review and case preparation, the Appeal Panel has been solicitous of intervenors' desires for additional time for case preparation. See, e.g., Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-212, 7 AEC 986, 992-93 (1974). At the same time, a party's failure to have as yet retained counsel does not provide grounds for seeking a delay in proceedings. Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LPB-75-67, 2 NRC 813 (1975). Moreover, a party must make a timely request for additional time to prepare its case; otherwise, it may waive its right to complain. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 188-89 (1978). More recently, too, both the Commission and the Appeal Board have made it clear that the fact that a party may possess fewer resources than others to devote to a proceeding does not relieve that party of its hearing obligations. See Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1261 n.29 (1982).

The Appeal Board granted Staff's request for an extension of a deadline for filing written testimony but called the matter to the attention of the Commission, which has supervisory authority over the Staff. In granting the extension, made as a result of the Staff's inability to meet the earlier deadline due to assignment of Staff to

Three Mile Island related matters, the Board rejected the intervenor's suggestion that it hold a hearing to determine the reasons for, and reasonableness of, the extension request. Florida Power and Light Company (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-553, 10 NRC 12 (1979).

Where time extensions have been granted, the original time period is not material to a determination as to whether due process has been observed. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-584, 11 NRC 451, 467 (1980).

3.3.3 Scheduling Disagreements Among Parties

Parties must lodge promptly any objections they may have to the scheduling of the prehearing phase of a proceeding. Late requests for changes in scheduling will not be countenanced absent extraordinary unexpected circumstances. Consolidated Edison Co. of N.Y. (Indian Point, Units 1, 2 & 3), ALAB-377, 5 NRC 430 (1977).

3.3.4 Appeals of Hearing Date Rulings

As a general rule, scheduling is a matter of ASLB discretion. As such, Appeal Boards are disinclined to interfere with scheduling decisions absent a "truly exceptional situation" which warrants ASLB interlocutory consideration. Public Service Co. of N.H. (Seabrook Station, Units 1 & 2), ALAB-295, 2 NRC 668 (1975); Public Service Co. of N.H. (Seabrook Station, Units 1 & 2), ALAB-293, 2 NRC 660 (1975). Since the responsibility for conduct of the hearing rests with the presiding officer pursuant to 5 U.S.C. § 556(c) and 10 CFR § 2.718, the Appeal Board is reluctant to examine a Licensing Board's scheduling decision except where there is a claim that such decision constituted an abuse of discretion and amounted to a denial of procedural due process. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 188 (1978). Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1260 (1982); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 379 (1985).

With regard to claims of insufficient time to prepare for a hearing, even if a party is correct in its assertion that the Staff received an initial time advantage in preparing testimony as a result of scheduling, it must make a reasonable effort to have the procedural error corrected (by requesting additional time to respond) and not wait to use the error as grounds for appeal if the party disagrees with the decision on the merits. A party

is entitled to a fair hearing, not a perfect one. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 188-89 (1978).

Although, absent special circumstances, the Appeal Board will generally review Licensing Board scheduling determinations only where confronted with a claim of deprivation of due process, the Appeal Board may, on occasion, review a Licensing Board scheduling matter when that scheduling appears to be based on the Licensing Board's misapprehension of an Appeal Board directive. See, e.g., Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-468, 7 NRC 464, 468 (1978).

3.3.5 Location of Hearing

(RESERVED)

3.3.5.1 Public Interest Requirements re Hearing Location

(RESERVED)

3.3.5.2 Convenience of Litigants Affecting Hearing Location

As a matter of policy, most evidentiary hearings in NRC proceedings are conducted in the general vicinity of the site of the facility involved. In generic matters, however, when the hearing encompasses distinct, geographically separated facilities and no relationship exists between the highly technical questions to be heard and the particular features of those facilities or their sites, the governing consideration in determining the place of hearing should be the convenience of the participants in the hearing. Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-566, 10 NRC 527, 530-531 (1979).

3.3.6 Consolidation of Hearings

Consolidation of hearings is covered generally by 10 CFR § 2.716.

Consolidation is primarily discretionary with the Boards involved. Taking into account the familiarity of the Licensing Boards with the issues most likely to bear on a consolidation motion, the Commission will interpose its judgment in consolidation cases only in the most unusual circumstances. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-26, 4 NRC 608 (1976).

Only parties to a Commission licensing proceeding may be consolidated. Petitioners who are not admitted as parties

may not be consolidated for the purposes of participation as a single party. 10 CFR § 2.715a; Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 623 (1981).

Under 10 CFR § 2.716, consolidation is permitted if found to be conducive to the proper dispatch of the Board's business and to the ends of justice. Dairyland Power Cooperative (La Crosse Boiling Water Reactor, Operating License and Show Cause), LBP-81-31, 14 NRC 375, 377 (1981).

The Commission may in its own discretion order the consolidation of two or more export licensing proceedings, and may utilize 10 CFR § 2.716 as guidance for deciding whether or not to take such action. Edlow International Co. (Agent for the Government of India on Application to Export Special Nuclear Materials), CLI-77-16, 5 NRC 1327, 1328-1329 (1977). Note, however, that persons who are not parties to either of two adjudicatory proceedings have no standing to have those proceedings consolidated under Section 2.716. Id. at 1328. Where proceedings on two separate applications are consolidated, the Commission may explicitly reserve the right to act upon the applications at different times. Edlow International Co. (Agent for the Government of India on Application to Export Special Nuclear Materials), CLI-78-4, 7 NRC 311, 312 (1978).

3.3.7 In Camera Hearings

No reason exists for an in camera hearing on security grounds where there is no showing of some incremental gain in security from keeping the information secret. Duke Power Co. (Amendment to Materials License SNM-1773, Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), CLI-80-3, 11 NRC 185, 186 (1980).

Procedures for in camera hearings are discussed in Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 1 & 2), ALAB-580, 11 NRC 227 (1980).

Where a party to a hearing objects to the disclosure of information and makes out a prima facie case that the material is proprietary in nature, it is proper for an adjudicatory board to issue a protective order and conduct an in camera session. If, upon consideration, the Board determined that the material was not proprietary, it would order the material released for the public record. Metro-politan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-807, 21 NRC 1195, 1214-15 (1985). See also Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-196, 7 AEC 457, 469 (1974). Because the party that seeks disclosure of allegedly proprietary information

has the right to conduct cross-examination in camera, no prejudice results from an adjudicatory board's use of this procedure. Three Mile Island, supra, 21 NRC at 1215.

Following issuance of a protective order enabling an intervenor to obtain useful information, a Board can defer ruling on objections concerning the public's right to know until after the merits of the case are considered; if an intervenor has difficulties due to failure to participate in in camera sessions, these cannot affect the Board's ruling on the merits. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-55, 14 NRC 1017, 1025 (1981).

3.4 Issues for Hearing

The judgment of a Licensing Board with regard to what is or is not in controversy in a proceeding being conducted by it is entitled to great respect. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-419, 6 NRC 3, 6 (1977).

A Licensing Board does not have the power to explore matters beyond those which are embraced by the notice of hearing for the particular proceeding. This is a holding of general applicability. Portland General Electric Company (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979); Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976). See also Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), ALAB-619, 12 NRC 558, 565 (1980); Commonwealth Edison Company (Zion Station, Units 1 & 2), ALAB-616, 12 NRC 419, 426 (1980); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-83-76, 18 NRC 1266, 1269, 1286 (1983).

The Commission's delegation of authority to a Licensing Board to conduct any necessary proceedings pursuant to 10 CFR Part 2, Subpart G includes the authority to permit an applicant for a license amendment to file contentions in a hearing requested by other parties even though the applicant may have waived its own right to a hearing. There are no specific regulations which govern the filing of contentions by an applicant. However, since an applicant is a party to a proceeding, it should have the same rights as other parties to the proceeding, which include the right to submit contentions, 10 CFR § 2.714, and the right to file late contentions under certain conditions, 10 CFR § 2.714(a). Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility), LBP-84-42, 20 NRC 1296, 1305-1307 (1984).

The issue of management capability to operate a facility is better determined at the time of the operating license application, than

years in advance on the basis of preliminary plans. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

A decisionmaking body must confront the facts and legal arguments presented by the parties and articulate the reasons for its conclusions on disputed issues, i.e., take a hard look at the salient problems. Union Electric Co. (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 366 (1983), citing, Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 41 (1977), aff'd, CLI-78-1, 7 NRC 1 (1978), aff'd sub nom., New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87 (1st Cir. 1978); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-781, 20 NRC 819, 836 (1984), affirming in part (full power license for Unit 1), LBP-82-70, 16 NRC 756 (1982).

Findings under 10 CFR § 2.104(a) on a need for a public hearing on issues involved in an application for an operating license cannot be made until after such application is filed. Such finding must be based on the application and information then available. Carolina Power & Light Co. (Shearon Harris Nuclear Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

Since the Appendix I (of 10 CFR 50) rule itself does not specify health effects, and there is no evidence that the purpose of the Appendix I rulemaking was to determine generally health effects from Appendix I releases, it follows that health effects of Appendix I releases must be litigable in individual licensing proceedings. Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-31, 12 NRC 264, 276 (1980). See also Consolidated Edison Co. of N.Y. (Indian Point, Unit No. 3); Power Authority of the State of N.Y. (Indian Point, Unit No. 3), LBP-82-105, 16 NRC 1629, 1641 (1982), citing, Black Fox, supra, 12 NRC at 264.

Upon certification the Commission held that in view of the fact that the TMI accident resulted in generation of hydrogen gas in excess of hydrogen generation design basis assumptions of 10 CFR § 50.44, hydrogen gas control could be properly litigated under Part 100. Under Part 100, hydrogen control measures beyond those required by 10 CFR § 50.44 would be required if it is determined that there is a credible loss-of-coolant accident scenario entailing hydrogen generation, hydrogen combustion, containment breach or leaking, and offsite radiation doses in excess of Part 100 guidelines values. Metropolitan Edison Company (Three Mile Island, Unit No. 1), CLI-80-16, 11 NRC 674, 675 (1980). See also Illinois Power Co. (Clinton Power Station, Unit 1), LBP-82-103, 16 NRC 1603, 1609 (1982), citing, Three Mile Island, supra, 11 NRC at 675.

A genuine scientific disagreement on a central decisional issue is the type of matter that should ordinarily be raised for adversarial exploration and eventual resolution in the adjudicatory context. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-715, 17 NRC 102, 105 (1983). See Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480, 491 (1976), aff'd sub nom. Virginia Electric and Power Co. v. NRC, 571 F.2d 1289 (4th Cir. 1978); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 912-13 (1982), review declined, CLI-83-2, 17 NRC 69 (1983).

The Commission may entirely eliminate certain issues from operating license consideration on the ground that they are suited for examination only at the earlier construction permit stage. Short of that, the Commission has considerable discretion to provide by rule that only issues that were or could have been raised by a party to the construction permit proceeding will not be entertained at the operating license stage except upon such a showing as "changed circumstances" or "newly discovered evidence." Commission practice, however, has been to determine the litigability of issues at the operating license stage with reference to conventional res judicata and collateral estoppel principles. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 354 (1983), citing, Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-673, 15 NRC 688, 696-97 (1982).

It is not a profitable use of adjudicatory time to litigate the Probabilistic Risk Assessment (PRA) methodology used on the chance that different methodology would identify a new problem or substantially modify existing safety concerns. If it is known that a problem exists which would be illustrated by a change in PRA methodology, that problem can be litigated directly; there is no need to modify the PRA to consider it. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-83-39, 18 NRC 67, 73 (1983).

3.4.1 Intervenor's Contentions - Admissibility at Hearing

Contentions are like Federal court complaints; before any decision that a contention should not be entertained, the proponent of the contention must be given some chance to be heard in response. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-81-18, 14 NRC 71, 73 (1981), citing, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521 (1979).

10 CFR § 2.714 sets forth the criteria by which ASLBs are to judge the admissibility of contentions. Pursuant to that regulation, a contention is acceptable as an issue

in controversy if some basis is provided for the contention and the basis is set forth with particularity. In passing on the admissibility of a contention, a Licensing Board is not to consider the merits of the contention itself. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 & 2), ALAB-182, 7 AEC 210, 216 (1974); Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 244 (1973); Illinois Power Co. (Clinton Power Station, Units 1 and 2), LBP-81-15, 13 NRC 708, 711 (1981).

Although amendments to the Commission's Rules of Practice with regard to intervention have affected the time as to which contentions must be filed, the amended rules retain the requirement that the basis for contentions be set forth with reasonable specificity. 10 CFR § 2.714(b); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 802 n.73 (1983), review denied, CLI-83-32, 18 NRC 1309 (1983). A Licensing Board is not authorized to admit conditionally, for any reason, a contention that falls short of meeting the requirement of reasonable specificity set forth in 10 CFR § 2.714. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 467 (1982), vacated in part on other grounds, CLI-83-19, 17 NRC 1041 (1983).

General fears or criticisms of past practices of the nuclear industry or the applicant are not appropriate bases for contentions unless there is reason to suspect the specific procedures or safety-related tests used in a proposed demonstration program which requires a license amendment. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-55, 14 NRC 1017, 1026 (1981).

Where the laws of physics deprive a proposed contention of any credible or arguable basis, the contention will not be admitted. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-84-16, 19 NRC 857, 870 (1984), aff'd, ALAB-765, 19 NRC 645, 654 n.13 (1984); compare Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980).

When the Board requires an applicant and the Staff to file briefs concerning the admissibility of contentions, intervenor must give reasons or authority for rejecting arguments presented in the required briefs. In ruling on admissibility, the Licensing Board should not reach the merits and should not require the introduction of underlying evidence, provided that the basis for the contention is identified with reasonable specificity. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant,

Units 1 and 2), LBP-81-24, 14 NRC 175, 181-83 (1981). Whether or not a basis for contentions has been established must be decided by considering the contentions in the context of the entire record of the case up to the time the contentions are filed. Thus, when an application for a license amendment is itself incomplete, the standard for the admission of contentions is lowered, because it is easier for petitioners to have reasons for believing that the application has not demonstrated the safety of the proposed procedures for which an amendment is sought. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-45, 14 NRC 853 (1981).

A contention concerning the health effects of radon emissions will be admitted only if the documented opinion of one or more qualified authorities is provided to the Licensing Board that the incremental (health effects of) fuel cycle-related radon emissions will be greater than those determined in the Appeal Board proceeding. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1454 (1982), citing, Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-654, 14 NRC 632, 635 (1981).

Where the only NEPA matters in controversy are legal contentions that there has been a failure to comply with NEPA and 10 CFR Part 51, the Board may rule on the contentions without further evidentiary hearings, making use of the existing evidentiary record and additional material of which it can take official notice. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-81-60, 14 NRC 1724, 1728 (1981).

When considering admission of new intervenor contentions based on new regulatory requirements, the Licensing Board must find a "nexus" between the new requirements and the particular facility involved in the proceeding, and that the contentions raise significant issues. The new contentions need not be solely related to contentions previously admitted, but may address themselves to the new requirements imposed. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-81-5, 13 NRC 226, 233-34 (1981).

As a general rule, Licensing Boards should not accept in individual license proceedings contentions which are (or about to become) the subject of general rulemaking by the Commission. As a corollary, certain issues included in an adjudicatory proceeding may be rendered inappropriate for resolution in that proceeding because the Commission has taken generic action during the pendency of the adjudication. There may nonetheless be situations in which matters subject to generic consideration may also

be evaluated on a case-by-case basis where such evaluation is contemplated by, or at least consistent with, the approach adopted in the rulemaking proceeding. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-729, 17 NRC 814, 889-90 (1983), aff'd, CLI-84-11, 20 NRC 1 (1984).

3.4.2 Issues Not Raised by Parties

A Licensing Board may, on its own motion, explore issues which the parties themselves have not placed in controversy. 10 CFR § 2.760a; Consolidated Edison Co. of N.Y., Inc. (Indian Point Nuclear Generating Station, Units 1, 2 & 3), ALAB-319, 3 NRC 188, 190 (1976). This power, however, is not a license to conduct fishing expeditions and, in operating license proceedings, should be exercised sparingly and only in extraordinary circumstances where the Board concludes that a serious safety or environmental issue remains. Consolidated Edison Co. of N.Y. (Indian Point Nuclear Generating Station, Unit 3), CLI-74-28, 8 AEC 7 (1974); Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-24, 14 NRC 614, 615 (1981). The Commission's Consolidated Edison ruling has been incorporated into the regulations in modified form at 10 CFR § 2.760a. When a Licensing Board in an operating license proceeding considers issues which might be deemed to be raised sua sponte by the Board, it should transmit copies of the order raising such issues to the Commission and General Counsel in accordance with the Secretary's memo of June 30, 1981. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-81-54, 14 NRC 918, 922-923 (1981).

The Licensing Board may be alerted to such serious issues not raised by the parties through the statements of those making limited appearances. See Iowa Electric Light & Power Co. (Duane Arnold Energy Center), ALAB-108, 6 AEC 195, 196 at fn.4 (1973).

Pursuant to authority granted under 10 CFR § 2.760a, the presiding officer may examine matters not put into controversy by the parties only where he or she determines that a serious safety, environmental or common defense and security matter exists. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-24, 14 NRC 614, 615 (1981).

The Commission has directed that when a Licensing Board or an Appeal Board raises an issue sua sponte in an operating license proceeding, it must issue a separate order making the requisite findings, briefly state its reasons for raising the issue, and forward a copy of the order to the OGC and the Commission. Comanche Peak, CLI-81-24, supra.

A Licensing Board may raise a safety issue sua sponte when sufficient evidence of a serious safety matter has been presented that reasonable minds could inquire further. Very specific findings are not required since they could cause prejudgment problems. The Board need only give its reasons for raising the problem. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-81-36, 14 NRC 691, 697 (1981).

In an operating license proceeding where a hearing is convened as a result of intervention, the Licensing Board will resolve all issues raised by the parties and any issues which it raises sua sponte. Consolidated Edison Co. of N.Y., Inc. (Indian Point Nuclear Generating Station, Units 1, 2 & 3), ALAB-319, 3 NRC 188, 190 (1976). The decision as to all other matters which need to be considered prior to issuance of the operating license is the responsibility of the NRC Staff alone. Indian Point, 3 NRC 188 at 190; Portland General Electric Co. (Trojan Nuclear Plant), ALAB-181, 7 AEC 207, 209 at fn.7 (1974); Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-26, 20 NRC 53, 58 (1984). Once the Licensing Board has resolved all contested issues and any sua sponte issues, the NRC Staff then has the power to decide if any other matters need to be considered prior to the issuance of an operating license. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-81-23, 14 NRC 159 (1981). The mere acceptance of a contention does not justify a Board's assuming that a serious safety, environmental, or common defense and security matter exists or otherwise relieve it of the obligation under 10 CFR § 2.760a to affirmatively determine that such a situation exists. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-36, 14 NRC 1111, 1114 (1981).

In a construction permit proceeding, the Licensing Board has a duty to assure that the NRC Staff's review, was adequate even as to matters which are uncontested. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 774 (1977).

3.4.3 Issues Not Addressed by a Party

The fact that the Staff may be estopped from asserting a position does not affect a Board's independent responsibility to consider the issue involved. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-268, 1 NRC 383 (1975).

An adjudicatory board's examination of unresolved generic safety issues, not put into controversy by the parties, is necessarily limited to whether the Staff's approach

is plausible, and the whether explanations given for support of continued safe operation of the facility are sufficient on their face. Northern States Power Company (Monticello Nuclear Generating Plant, Unit 1), ALAB-620, 12 NRC 574, 577 (1980).

The parties must be given an opportunity, at oral hearing or by written pleadings, to produce relevant evidence concerning abuses of Commission regulations and adjudicatory process, but if a party fails to formally tender such evidence, the Licensing Board should not engage in its own independent and selective search of the record. Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 978 (1981).

3.4.4 Separate Hearings on Special Issues

Pursuant to a Licensing Board's general power to regulate the course of a hearing under 10 CFR § 2.718, such Boards have the authority to consider, either on their own or at a party's request, a particular issue separately from and prior to other issues that must be decided in a proceeding. Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-277, 1 NRC 539, 544 (1975). See also 10 CFR Part 2, Appendix A, ¶ I(c)(1). Indeed, multiple contentions can be grouped and litigated in separate segments of the evidentiary hearing so as to enable the Licensing Board to issue separate partial initial decisions, each of which decides a major segment of the case. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1136 (1983).

In a special proceeding, where the Commission has specified the issues for hearing, a Licensing Board is obliged to resolve all such issues even in the absence of active participation by intervenors. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1263 (1984), rev'd in part on other gnds., CLI-85-2, 21 NRC 282 (1985).

A request for a low-power license does not give rise to an entire proceeding separate and apart from a pending full-power operating license proceeding. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-82-39, 16 NRC 1712, 1715 (1982), citing, Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361 (1981).

The Appeal Board's holding in Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539 (1975), that any early findings

made by a Licensing Board, in circumstances where the applicant had disclosed an intent to postpone construction for several years, would be open to reconsideration "only if supervening developments or newly available evidence so warrant", does not support a later Licensing Board's action in imposing a similar limitation on the right to raise issues which were not encompassed by the early findings. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 386-387 (1979), reconsid. denied, ALAB-539, 9 NRC 422 (1979).

3.4.5 Construction Permit Extension Proceedings

Intervenors in a construction permit extension proceeding may only litigate those issues that (1) arise from the reasons assigned to the requested extension, and (2) cannot abide the operating license proceeding. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), LBP-80-31, 12 NRC 699, 701 (1980). Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-41, 15 NRC 1295, 1301 (1982).

Contentions having no discernible relationship to the construction permit extension are inadmissible in a permit extension proceeding; a show-cause proceeding under 10 CFR § 2.206 is the exclusive remedy. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), LBP-81-6, 13 NRC 253, 254 (1981), citing, Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558 (1980); Shoreham, supra at 1302; Public Service Co. of New Hampshire (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975, 979 (1984).

The focus of any construction permit extension proceeding is to be whether "good cause" exists for the requested extension. Determination of the scope of an extension proceeding should be based on "common sense" and the "totality of the circumstances," more specifically whether the reasons assigned for the extension give rise to health and safety or environmental issues which cannot appropriately abide the event of the environmental review-facility operating license hearing. A contention cannot be litigated in a construction permit extension proceeding when an operating license proceeding is pending in which the issue can be raised; and, prior to the operating license proceeding, a contention having nothing whatsoever to do with the causes of delay or the permit holder's justifications for an extension cannot be litigated in a construction permit proceeding. In seeking an extension, a permit holder must put forth reasons, founded in fact, that explain why the delay occurred and those reasons must, as a matter of law, be sufficient to sustain a finding of

good cause. Washington Public Power Supply System (WPPSS Nuclear Project Nos. 1 and 2), CLI-82-29, 16 NRC 1221, 1227, 1229-30 (1982), citing, Indiana and Michigan Electric Co. (Donald C. Cook Nuclear Plant, Units 1 and 2), ALAB129, 6 AEC 414 (1973); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558 (1980). See Washington Public Power Supply System (WPPSS Nuclear Project No. 1), ALAB-771, 19 NRC 1183, 1189 (1984).

The NRC's inquiry will be into reasons that have contributed to the delay in construction and whether those reasons constitute "good cause" for the extension; the same limitation to apply to any interested person seeking to challenge the request for an extension. The most "common sense" approach to the interpretation of Section 185 of the Atomic Energy Act and 10 CFR § 50.55 is that the scope of a construction permit extension proceeding is limited to direct challenges to the permit holder's asserted reasons that show "good cause" justification for the delay. WPPSS, supra, 16 NRC at 1228-1229; Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-722, 17 NRC 546, 550-51 (1983); Public Service Co. of New Hampshire (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975, 978 (1984).

The test for determining whether a contention is within the scope of a construction permit extension proceeding is a two-pronged one. First, the construction delays at issue have to be traceable to the applicant. Second, the delays must be "dilatatory." If both prongs are met, the delay is without "good cause." WPPSS, supra, CLI-82-29, 16 NRC at 1231, ALAB-722, 17 NRC at 551; Washington Public Power Supply System (WPPSS Nuclear Project No. 1), LBP-84-9, 19 NRC 497, 502 (1984), aff'd, ALAB-771, 19 NRC 1183, 1189 (1984).

"Dilatatory conduct" in the sense used by the Commission in defining the test for determining whether a contention is within the scope of a construction permit extension proceeding means the intentional delay of construction without a valid purpose. WPPSS, supra, ALAB-722, 17 NRC at 552; WPPSS, supra, LBP-84-9, 19 NRC at 502, aff'd, ALAB-771, 19 NRC at 1190.

An intentional slowing of construction because of a temporary lack of financial resources or a slower growth rate of electric power than had been originally projected would constitute delay for a valid business purpose. WPPSS, supra, LBP-84-9, 19 NRC at 504, aff'd, ALAB-771, 19 NRC at 1190.

The Licensing Board should not substitute its judgment for that of the applicant in selecting one among a number of reasonable business alternatives. It is not the Board's mission to superintend utility management when it makes business judgments for which it is ultimately responsible. WPPSS, supra, ALAB-771, 19 NRC at 1190-91, citing, Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-475, 7 NRC 752, 757-58 (1978).

Unless an applicant is responsible for delays in completion of construction and acted in a dilatory manner (i.e., intentionally and without a valid purpose), a contested construction permit extension proceeding is not to be undertaken at all. Moreover, even if a properly framed contention leads to such a proceeding and is proven true, the Atomic Energy Act and implementing regulations do not erect an absolute bar to extending the permit. A judgment must still be made as to whether continued construction should nonetheless be allowed. WPPSS, supra, ALAB-722, 17 NRC at 553.

A consideration of the health, safety or environmental effects of delaying construction cannot be heard at the construction permit extension proceeding but must await the operating license stage. WPPSS, supra, LBP-84-9, 19 NRC at 506-07, aff'd, ALAB-771, 19 NRC at 1189.

There is no basis in the Atomic Energy Act or in the regulations for challenging the period of time in the requested extension on the grounds that the period requested is too short. WPPSS, supra, LBP-84-9, 19 NRC at 506, aff'd, ALAB-771, 19 NRC at 1191.

3.4.6 Export Licensing Proceedings Issues

The export licensing process is an inappropriate forum to consider generic safety questions posed by nuclear power plants. Under the Atomic Energy Act, as amended by the Nuclear Non-proliferation Act of 1978, the Commission in making its export licensing determinations focuses on non-proliferation and safeguards concerns, and not on foreign health and safety matters. Westinghouse Electric Corp. (Export to South Korea), CLI-80-30, 12 NRC 253, 260-261 (1980). General Electric Co. (Exports to Taiwan), CLI-81-2, 13 NRC 67, 71 (1981). (See also 6.29.2)

3.5 Summary Disposition

In Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 & 2), ALAB-182, 7 AEC 210, 217 (1974), the Appeal Board found that summary disposition, governed by 10 CFR § 2.749, was analogous to and had a judicial counterpart in Rule 56 of the Federal Rules of Civil Procedure which authorizes the filing of a motion

for summary judgment. See also Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 519 (1982), citing, Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753-754 (1977).

Decisions arising under the Federal Rules may serve as guidelines to Licensing Boards in applying 10 CFR 2.749. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 519 (1982), citing, Perry, ALAB-443, supra, at 754; Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-74-36, 7 AEC 877, 878-879 (1974). Subsequent decisions of Licensing Boards have analogized 10 CFR § 2.749 to Rule 56 to the extent that the Rule applied in the cases in question. See, e.g., Public Service Co. of Oklahoma (Black Fox Station, Units 1 & 2), ALAB-573, 10 NRC 775, 787 at n.51 (1978); Gulf States Utilities Co. (River Bend Station, Units 1 & 2), LBP-75-10, 1 NRC 246, 247 (1975); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), LBP-74-36, 7 AEC 877, 878 (1974). (See also 5.8.5)

Under the concept of summary disposition (or summary judgment), the motion is granted only where the movant is entitled to judgment as a matter of law, where it is quite clear what the truth is and where there is no genuine issue of material fact that remains for trial. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 & 3), LBP-73-29, 6 AEC 682, 688 (1973). A contention will not be summarily dismissed where the Licensing Board determines that there still exist controverted issues of material fact. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), LBP-81-34, 14 NRC 637, 640-41 (1981). Admission as a party to a Commission proceeding based on one acceptable contention does not preclude summary disposition nor guarantee a party a hearing on its contentions. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1258 n.15 (1982), citing, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550 (1980). Section 2.749, like Rule 56, is a procedural device to be used as part of a screening mechanism for eliminating unnecessary consideration of assertions which do not involve factual controversy. Use of summary disposition to resolve tenuous issues raised in petitions to intervene has been encouraged by the Commission and the Appeal Board. See, e.g., Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-73-12, 6 AEC 241, 242 (1973); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-629, 13 NRC 75, 77 (1981); Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-130, 6 AEC 423, 424-25 (1973); Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 246 (1973); Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-81-8, 13 NRC 335, 337 (1981). If the issue is demonstrably insubstantial, it should be decided pursuant to summary disposition procedures to avoid unnecessary

and possibly time-consuming hearings. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), LBP-81-48, 14 NRC 877, 883 (1981), citing, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980).

The Commission's summary disposition rule (10 CFR § 2.749) gives a party a right to an evidentiary hearing only where there is a genuine issue of material fact. An important effect of this principle is that applicants for licenses may be subject to substantial expense and delay when genuine issues have been raised, but are entitled to an expeditious determination, without need for an evidentiary hearing on all issues which are not genuine. Consumers Power Co. (Big Rock Point Plant), LBP-82-8, 15 NRC 299, 301 (1982).

On its face, 10 CFR § 2.749 provides a remedy only with regard to matters which have not already been the subject of an evidentiary hearing in the proceedings at bar, but which are susceptible of final resolution on the papers submitted by the parties in advance of any such hearing. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-554, 10 NRC 15, 19 (1979).

In an interesting approach seeking to avoid relitigation of matters considered in a prior proceeding concerning the same reactor, a Licensing Board invited motions for summary disposition which rely on the record of the prior proceeding. In response, the intervenor was expected to indicate why the prior record was inadequate and why further proceedings might be necessary. The Licensing Board planned to take official notice of the record in the prior proceeding and render a decision as to whether further evidentiary hearings were necessary. General Electric Co. (GETR Vallecitos), LBP-85-4, 21 NRC 399, 408 (1985).

If intervenors present evidence or argument that directly and logically challenges the basis for summary disposition, creating a genuine issue of fact for resolution by the Board, then summary disposition cannot be granted. On the other hand, if intervenors' facts are fully and satisfactorily explained by other parties, without any direct conflict of evidence, then intervenors will have failed to show the presence of a genuine issue of material fact. However, after finishing the process of reviewing facts contained in the intervenor's response, the Board must also examine the motion to see whether the movant's unopposed findings of fact establish the basis for summary disposition. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-114, 16 NRC 1909, 1913 (1982).

The parties may provide the Board with greater authority to grant summary disposition through a stipulation. For example, the Board may be authorized to grant summary disposition whenever it decides that it can arrive at a reasonable decision

without benefit of a hearing. That standard would permit the Board to grant summary disposition under some circumstances in which it would otherwise be required to find that there is a genuine issue of fact requiring trial. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-84-25, 19 NRC 1589, 1591 (1984).

3.5.1 Use of Summary Disposition

The Commission and Appeal Board have encouraged the use of summary disposition to resolve contentions where an intervenor has failed to establish that a genuine issue exists. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 519 (1982), citing, Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-73-12, 6 AEC 241, 242 (1973), aff'd sub nom. BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550-551 (1980); Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 424-425 (1973).

3.5.1.1 Construction Permit Hearings

While, as a general rule, summary disposition can be granted in nearly any proceeding as to nearly any matter for which there is no general issue of material fact, there is an exception under NRC Practice. In construction permit hearings, summary disposition may not be used to determine the ultimate issue as to whether the CP will be granted. 10 CFR § 2.749(d). See Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), LBP-80-15, 11 NRC 765, 767 (1980).

3.5.1.2 Amendments to Existing Licenses

Summary disposition may be used in license amendment proceedings where a hearing is held with respect to the amendment. Boston Edison Co. (Pilgrim Nuclear Station, Unit 1), ALAB-191, 7 AEC 417 (1974). See, e.g., Public Services Electronic and Gas Co. (Salem Nuclear Generating Station, Unit 1), LBP-79-14, 9 NRC 557, 566-567 (1979).

3.5.2 Motions for Summary Disposition

Under the Rules of Practice, 10 CFR Part 2, a motion for summary disposition should be granted if the Licensing Board determines, with respect to the question at issue, that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. 10 CFR § 2.749(d).

10 CFR § 2.749 permits a Board to deny summarily motions for summary disposition which occur shortly before a hearing where the motion would require the diversion of the parties' or the Board's resources from preparation for the hearing. The Regents of the University of California (UCLA Research Reactor), LBP-82-93, 16 NRC 1391, 1393 (1982).

The Board may not dictate to any party the manner in which it presents its case. The Board may not substitute its judgment for the parties on the merits of their case in order to summarily dismiss their motions, but it must deal with the motions on the merits before reaching a conclusion. UCLA Research Reactor, *supra*, 16 NRC at 1394, 1395.

Under the NRC Rules of Practice, there is required to be annexed to a motion for summary disposition a "separate, short and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard." Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 520 (1982), citing 10 CFR § 2.749(a). Where such facts are properly presented and are not controverted, they are deemed to be admitted. La Crosse, *supra*, 16 NRC at 520.

If there is any possibility that a litigable issue of fact exists or any doubt as to whether the parties should have been permitted or required to proceed further, the motion must be denied. General Electric Co. (GE Morris Operation Spent Fuel Storage Facility), LBP-82-14, 15 NRC 530, 532 (1982). As the Board rules on such a motion, all statements of material facts required to be served by the moving party must be deemed to be admitted, unless controverted by the statement required to be served by the opposing party. 10 CFR § 2.749. Motions for summary disposition under Section 2.749 are analogous to motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. To defeat a motion for summary disposition, an opposing party must present facts in an appropriate form. Conclusions of law and mere arguments are not sufficient. The asserted facts must be material and of a substantial nature, not fanciful or merely suspicious. Where neither an answer opposing the motion nor a statement of material fact has been filed by an intervenor, and where Staff and applicants have filed affidavits to show that no genuine issue exists, the motion for summary judgment will not be defeated. Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-82-17, 15 NRC 593, 595-96 (1982).

A summary disposition decision that an allegation presents no genuine issue of fact may preclude admission of a subsequent, late filed contention based on the same allegation. Consumer Power Co. (Big Rock Point Plant), LBP-82-19B, 15 NRC 627, 631-632 (1982).

Answers to interrogatories can be used to counter evidentiary material proffered in support of a motion for summary disposition, but only if they are made on the basis of personal knowledge, over facts that would be admissible as evidence, and are made by a respondent competent to testify to those facts. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-32A, 17 NRC 1170, 1175 (1983).

3.5.2.1 Time For Filing Motions for Summary Disposition

A motion for summary disposition shall be filed within such time as may be established by the presiding officer. 10 CFR § 2.749(a). While the rule on summary disposition does not establish a fixed time for filing motions, leaving that to the presiding officer, it is customary to file such motions well after discovery has commenced. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1945 (1982). However, if the Licensing Board determines that there are not genuine issues of material fact, it may grant summary disposition even before discovery is otherwise completed if the party opposing the motion cannot identify what specific information it seeks to obtain through further discovery. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1263, (1982), citing, 10 CFR § 2.749(c); Fed. R. Civ. P. 56(f); Sec. & Exch. Comm'n v. Spence & Green Chemical Co., 612 F.2d 896, 901 (5th Cir. 1980), cert. denied, 449 U.S. 1082 (1981); Donofrio v. Camp 470 F.2d 428, 431-432 (D.C. Cir. 1972).

A Licensing Board convened solely to rule on petitions to intervene lacks the jurisdiction to consider filings going to the merits of the controversy. Consequently, such a Board cannot entertain motions for summary disposition. Pacific Gas & Electric Co. (Stanislaus Nuclear Project, Unit 1), ALAB-400, 5 NRC 1175, 1177-78 (1977). The filing of such motions must, therefore, await the appointment of a hearing board.

In Consumers Power Co. (Big Rock Point Plant), LBP-82-8, 15 NRC 299, 336 (1982), the Board permitted late filing of affidavits in support of a motion for summary disposition where: (1) blizzard conditions and misunderstandings as to late filing requirements existed; (2) no serious delay in the proceedings resulted; and (3) the testimony and affidavits submitted were particularly helpful and

directly relevant to the safety of the spent fuel pool amendment being sought.

In the interest of expedition, a motion for summary disposition may be filed at any time in the course of a proceeding. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1263 (1982), citing, 10 CFR § 2.749(a); 46 Fed. Reg. 30328, 30330, 30331 (June 8, 1981).

3.5.2.2 Time for Filing Response to Summary Disposition Motion

The ambiguity in the provisions of 10 CFR § 2.749, when considered in light of the requirements of 10 CFR § 2.730, with regard to the time for filing responses to motions for summary disposition (see Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), LBP-75-9, 1 NRC 243, 244 (1975)) has been removed by amendments, to Section 2.749. Section 2.749(a), as amended, requires that responses to motions for summary disposition be filed within 20 days after service of the motion.

3.5.2.3 Contents of Motions/Responses (Summary Disposition)

The general requirements as to contents of motions for summary disposition and responses thereto are set out in 10 CFR § 2.749.

A grant of summary disposition is proper where the pleadings and affidavits on file "show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law." 10 CFR § 2.749(d). Florida Power and Light Co. (Turkey Point Nuclear Generating, Units 3 and 4), ALAB-660, 14 NRC 987, 1003 (1981), citing, Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451 (1980).

All material facts set forth in the motion and not adequately controverted by the response are deemed to be admitted. 10 CFR § 2.749(a). Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-3, 17 NRC 59, 61 (1983). A party opposing the motion may not rely on a simple denial of material facts stated by the movant but must set forth specific facts showing that there is a genuine issue. 10 CFR § 2.749(b). Where a party opposing the motion is unable to file affidavits in opposition in the time available, he may file an affidavit showing good reasons for his inability to make a timely response in which case the Board may refuse summary disposition or grant a continuance to permit proper affidavits to be prepared. 10 CFR § 2.749(c).

As to affidavits in support of a motion for a summary disposition, a document submitted with a verified letter in which the attestation states that the person is "duly authorized to execute and file this information on behalf of the applicants" is not sufficient to make the document admissible into evidence pursuant to § 2.749(b). An affidavit must be submitted by a person to show he is competent to testify to all matters discussed in the document. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-443, 6 NRC 741, 755 (1977).

Movant's papers which are insufficient to show an absence of an issue of fact, cannot premise a grant of summary judgment. Similarly, a response opposing a motion for summary judgment must have a statement of material facts. Mere allegations and denials will not suffice, but there must be a showing of genuine issues of fact. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-629, 13 NRC 75, 78 (1981); Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 & 2), ALAB-584, 11 NRC 451 (1980); Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-81-8, 13 NRC 335, 337 (1981); 10 CFR § 2.749(b). In that connection, it would frequently not be sufficient for an opponent to rely on quotations from or citations to published work of researchers who have apparently reached conclusions at variance with the movant's affiants. Carolina Power & Light Co. and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Plant, Units 1 and 2), LBP-84-7, 19 NRC 432, 436 (1984), reconsid. den. on other grounds, LBP-84-15, 19 NRC 837, 838 (1984).

Answers to interrogatories can be used to counter evidentiary material proffered in support of a motion for summary disposition, but only if they are made on the basis of personal knowledge, over facts that would be admissible as evidence, and are made by a respondent competent to testify to those facts. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-32A, 17 NRC 1170, 1175 (1983).

3.5.3 Summary Disposition Rules

By and large, the rules and standards established by the courts for granting or denying a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will be applied by Licensing Boards in their consideration of motions for summary disposition under 10 CFR § 2.749. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 & 2), ALAB-182, 7 AEC 210, 217 (1974).

Based on judicial interpretations of Rule 56, the burden of proof with respect to summary disposition is upon the movant who must demonstrate the absence of any genuine issue of material fact. J. Moore, Federal Practice, Vol. 6, Ch. 56, para. 56.15(3) (2nd ed. 1966); Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 519 (1982), citing, Adickes v. Kress and Co., 398 U.S. 144, 157 (1970). Thus, if a movant fails to make the requisite showing, its motion may be denied even in the absence of any response by the proponent of a contention. La Crosse, supra, 16 NRC at 519. See Carolina Power & Light Co. and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Plant, Units 1 and 2), LBP-84-7, 19 NRC 432, 435 (1984), reconsid. den. on other grounds, LBP-84-15, 19 NRC 837, 838 (1984).

Nonetheless, where a proponent of a contention fails to respond to a motion for summary disposition, it does so at its own risk; for, if a contention is to remain litigable, there must at least be presented to the Board a sufficient factual basis "to require reasonable minds to inquire further." Dairyland Power Cooperative, supra, 16 NRC at 519-20, citing, Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 340 (1980); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 NRC 1321, 1325 n.3 (1983). To meet this burden, the movant must eliminate any real doubt as to the existence of any genuine issue of material fact. Poller v. Columbia Broadcasting Co., Inc., 368 U.S. 464 (1962); Sartor v. Arkansas Natural Gas Corp., 321 U.S. 620, 627 (1954); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), LBP-81-48, 14 NRC 877, 883 (1981). The record and affidavits supporting and opposing the motion must be viewed in the light most favorable to the party opposing the motion. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), LBP-74-36, 7 AEC 877 (1974) and cases cited therein at pp. 878-879. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 519 (1982), citing, Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 473 (1962); Crest Auto Supplies, Inc. v. Ero Manufacturing Co., 360 F.2d 896, 899 (7th Cir. 1966); United Mine Workers of America, Dist. 22 v. Roncco, 314 F.2d 186, 188 (10th Cir. 1963); Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-81-8, 13 NRC 335, 337 (1981). The opposing party need not show that he would prevail on the issues but only that there are genuine issues to be tried. American Manufacturers Mut. Ins. Co. v. American Broadcasting - Paramount Theaters, Inc., 388 F.2d 272, 280

(2d Cir. 1967). The fact that the party opposing summary disposition failed to submit evidence controverting the disposition does not mean that the motion must be granted. The proponent of the motion must still meet his burden of proof to establish the absence of a genuine issue of material fact. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-443, 6 NRC 741, 753-54 (1977); Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-81-8, 13 NRC 335, 337 (1981).

Even if no party opposes a motion for summary disposition, the movant's filings must still establish the absence of a genuine issue of material fact. An intervenor that does respond to a motion for summary disposition but that fails to file the required "separate statement" should be no worse off than one who fails to respond at all. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-3, 17 NRC 59, 62 (1983).

The regulations do not require merely the showing of a "material issue of fact" or an "issue of fact." They require a genuine issue of material fact. To be genuine, the factual record, considered in its entirety, must be enough in doubt so that there is a reason to hold a hearing to resolve the issue. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-46, 18 NRC 218, 223 (1983).

Where the existing record is insufficient to allow summary disposition, it is not improper for a Licensing Board to request submission of additional documents which it knows would support summary disposition and to consider such documents in reaching a decision on a summary disposition motion. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-443, 6 NRC 741, 752 (1977).

When summary disposition is requested before discovery is completed, the Board may deny the request either upon a showing of the existence of a genuine issue of material fact or upon a showing that there is good reason for the Board to defer judgment until after specific discovery requests are made and answered. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-55, 14 NRC 1017, 1021 (1981).

The limitation on summary disposition in a construction permit proceeding does not apply in a construction permit amendment proceeding. Summary disposition may be granted in a construction permit amendment proceeding where there is no genuine issue as to any material fact that warrants a hearing and the moving party is entitled to a decision

in its favor as a matter of law. Washington Public Power Supply System (WPPSS Nuclear Project No. 1), ALAB-771, 19 NRC 1183, 1188 and n.14 (1984).

In an operating license proceeding, where significant health and safety or environmental issues are involved, a Licensing Board should grant a motion for summary disposition only if it is convinced from the material filed that the public health and safety or the environment will be satisfactorily protected. Cincinnati Gas and Electric (William H. Zimmer Nuclear Station), LBP-81-2, 13 NRC 36, 40-41 (1981), citing, Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741 (1977); 10 CFR §2.760a.

In an operating license proceeding, summary disposition on safety issues should not be considered or granted until after the Staff's Safety Evaluation Report and the ACRS letter have been issued. Duke Power Co. (William B. McGuire Nuclear Station, Units 1 & 2), LBP-77-20, 5 NRC 680, 681 (1977).

An answer filed in response to a summary disposition motion, in support of the motion, was not considered by the Licensing Board because 10 CFR § 2.749 provided only for answers "opposing the motion." Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), LBP-79-14, 9 NRC 557 (1979). Subsequently, the holding in Salem, supra, was rendered invalid by a change to 10 CFR § 2.749(a) which specifically permits responses in support of, as well as in opposition to, motions for summary disposition. 45 Fed. Reg. 68919 (Oct. 17, 1980).

When a proper showing for summary disposition has been made by the movant, the party opposing the motion must aver specific facts in rebuttal. Where the movant has satisfied his initial burden and has supported his motion by affidavit, the opposing party must proffer countering evidential material or an affidavit explaining why it is impractical to do so. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-32A, 17 NRC 1170, 1174 n.4 (1983).

In the summary disposition area, health effects contentions have been differentiated from other contentions. An opponent of summary disposition in the health effects area must have some new (post-1975) and substantial evidence that casts doubt on the BEIR estimates. Furthermore, he must be prepared to present that evidence through qualified witnesses at the hearing. Carolina Power & Light Co. and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Plant, Units 1 and 2),

LBP-84-7, 19 NRC 432, 437 (1984), reconsid. den., LBP-84-15, 19 NRC 837, 838 (1984), citing, Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-31, 12 NRC 264, 277 (1980).

3.5.4 Content of Summary Disposition Order

In granting summary judgment, the Licensing Board should set forth the legal and factual bases for its action. Where it has not, the Appeal Board will examine the record and see if there are any genuine issues. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-584, 11 NRC 451, 453 n.4 (1980).

3.5.5 Appeals from Rulings on Summary Disposition

As is the case under Rule 56 of the Federal Rules, a denial of a motion for summary disposition is interlocutory and, therefore, not appealable. Louisiana Power & Light Co. (Waterford Steam Electric Generating Station, Unit 3), ALAB-220, 8 AEC 93 (1974). This applies as well to denials of partial summary disposition. Waterford, cited in Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-641, 13 NRC 550, 551 (1981). An order granting summary disposition of an intervenor's sole contention is not interlocutory since the consequence is intervenor's dismissal from the proceeding. As such, it is immediately appealable. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-629, 13 NRC 75, 77 n.2 (1981). An order summarily dismissing some, but not all, of an intervenor's contentions which does not have the effect of dismissing the intervenor from the proceeding is interlocutory in nature and an appeal must await the issuance of an initial decision. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-736, 18 NRC 165 (1983); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-807, 21 NRC 1195, 1198 n.3 (1985).

Where a Licensing Board has not set forth the legal and factual basis for its action on a summary judgment motion, the Appeal Board will examine the record to see if there are any genuine issues. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-584, 11 NRC 451, 453 n.4 (1980).

3.6 Attendance at and Participation in Hearings

An intervenor may not step in and out of participation in a particular issue at will. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-288, 2 NRC 390, 393 (1975). According to one Licensing Board, an intervenor who

raises an issue and then refuses to actively participate in the hearing may lose his right to appeal the Licensing Board's decision. Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), LBP-76-7, 3 NRC 156 (1976). A party's total failure to assume a significant participational role in a proceeding (e.g., his failure to appear at hearings and to file proposed findings), at least in combination with other factors militating against his being retained as a party, will, upon motion of another party, result in his dismissal from the proceeding. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-358, 4 NRC 558, 560 (1976).

A party who decides not to attend all hearing sessions does so at his own peril. Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), 2 CCH Nuclear Reg. Rep. ¶ 30,091 (Aug. 5, 1976). If an intervenor "walks out", it is nevertheless proper for the Licensing Board to proceed in his absence. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 251 (1975); 10 CFR § 2.707(b). The best practice in such a situation is for the Board to make thorough inquiry as to the issues raised by the absent intervenor despite his absence. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-242, 8 AEC 847, 849 (1974).

A party who was dismissed from a proceeding for failing to respond, without good cause, to Board orders reactivating the proceeding, must satisfy the criteria for untimely petitions to intervene in order to be readmitted. General Electric Co. (G.F.R. Vallecitos), LBP-84-54, 20 NRC 1637, 1642-1643 (1984).

A party seeking to be excused from participation in a prehearing conference should present its justification in a request presented before the date of the conference. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-488, 8 NRC 187, 191 (1978).

The appropriate sanction for willful refusal to attend a prehearing conference is dismissal of the petition for intervention. In the alternative, an appropriate sanction is the acceptance of the truth of all statements made by the applicant or the Staff at the prehearing conference. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), LBP-82-108, 16 NRC 1811, 1817 (1982).

Where an intervenor indicates its intention not to participate in the evidentiary hearing, the intervenor may be held in default and its admitted contentions dismissed although the Licensing Board will review those contentions to assure that they do not raise serious matters that must be considered. Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), LBP-76-7, 3 NRC 156, 157 (1976).

where an issue is remanded to the Licensing Board and a party did not previously participate in consideration of that issue, submitting no contentions, evidence or proposed findings on it and taking no exceptions to the Licensing Board's disposition of it, the Licensing Board is fully justified in excluding that party from participation in the remanded hearing on that issue. Status as a party does not carry with it a license to step in and out of consideration of issues at will. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 268-69 (1976).

A participant in an NRC proceeding should anticipate having to manipulate its resources, however limited, to meet its obligations. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-719, 17 NRC 387, 394 (1983), citing, Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-666, 15 NRC 277, 279 (1982); Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-566, 10 NRC 527, 530 (1979).

3.7 Burden and Means of Proof

A licensee generally bears the ultimate burden of proof. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-697, 16 NRC 1265, 1271 (1982), citing, 10 CFR § 2.732. But intervenors must give some basis for further inquiry. Three Mile Island, supra, 16 NRC at 1271.

The ultimate burden of proof in a licensing proceeding on the question of whether a permit or license should be issued is upon the applicant. But where one of the other parties to the proceeding contends that, for a specific reason the permit or license should be denied, that party has the burden of going forward with evidence to buttress that contention. Once the party has introduced sufficient evidence to establish a prima facie case, the burden then shifts to the applicant, which as part of its overall burden of proof, must provide a sufficient rebuttal to satisfy the Board that it should reject the contention as a basis for denial of the permit or license. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1093 (1983), citing, Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 345 (1973).

Where the Licensing Board directed an intervenor to proceed with its case first because of the intervenor's failure to comply with certain discovery requests and Board orders, the alteration in the order of presentation did not shift the burden of proof. That burden has been and remains on the licensee. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1245 (1984), rev'd in part on other gnds., CLI-85-2, 21 NRC 282 (1985).

Under Commission practice, the applicant for a construction permit or operating license always has the ultimate burden of proof. 10 CFR § 2.732. The degree to which he must persuade the board (burden of persuasion) should depend upon the gravity of the matters in controversy. Virginia Electric & Power Company (North Anna Power Station, Units 1, 2, 3 & 4), ALAB-256, 1 NRC 10, 17, n.18 (1975).

An applicant has the burden of proof to demonstrate that the off-site emergency plan complies with Commission rules and guidance. The burden must be carried whether or not the applicant is primarily responsible for carrying out a particular aspect of the plan. Consumers Power Co. (Big Rock Point Plant), LBP-82-77, 16 NRC 1096, 1099 (1982), citing, 10 CFR § 2.732.

There is some authority to the effect that in show cause proceedings for modification of a construction permit, the burden of going forward is on the Staff or intervenor who is seeking the modification since such party is the "proponent of an order." Consumers Power Company (Midland Plant, Units 1 & 2), LBP-74-54, 8 AEC 112 (1974).

With respect to motions, the moving party has the burden of proving that the motion should be granted and he must present information tending to show that allegations in support of his motion are true. Consolidated Edison Co. of N.Y., Inc. (Indian Point Station, Units 1, 2 & 3), CLI-77-2, 5 NRC 13 (1977).

The general rule that the applicant carries the burden of proof does not apply with regard to alternate site considerations. For alternate sites, the burden of proof is on the Staff and the applicant's evidence in this regard cannot substitute for an inadequate analysis by the Staff. Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), ALAB-479, 7 NRC 774, 794 (1978).

The applicant carries the burden of proof on safety issues. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983), citing, Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-283, 2 NRC 11, 17 (1975).

3.7.1 Duties of Applicant/Licensee

A licensee of a nuclear power plant has a great responsibility to the public, one that is increased by the Commission's heavy dependence on the licensee for accurate and timely information about the facility and its operation. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1208 (1984), rev'd in part on other gnds., CLI-85-2, 21 NRC 282 (1985).

The NRC is dependent upon all of its licensees for accurate and timely information. The Licensee must have a detailed knowledge of the quality of installed plant equipment. Petition for Emergency and Remedial Action, CLI-80-21, 11 NRC 707, 712 (1980); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 910 (1982), citing, Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 418 (1978); Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3), ALAB-677, 15 NRC 1387 (1982).

In general, if a party has doubts about whether to disclose information, it should do so, as the ultimate decision with regard to materiality is for the decisionmaker, not the parties. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 914 (1982).

The ultimate burden of persuasion rests with applicant and with NRC Staff to extent Staff supports the applicant's position. Parties saddled with this burden typically proceed first and then have the right to rebut the case presented by their adversaries. Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-566, 10 NRC 527, 529 (1979).

3.7.2 Intervenor's Contentions - Burden and Means of Proof

It has long been held that an intervenor has the burden of going forward, either by direct evidence or by cross-examination, as to issues raised by his contentions. Philadelphia Electric Co. (Limerick Generating Station, Units 1 & 2), ALAB-262, 1 NRC 163, 191 (1975); Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1008, reconsid. den., ALAB-166, 6 AEC 1148 (1973), remanded on other gnds., CLI-74-2, 7 AEC 2, aff'd, ALAB-175, 7 AEC 62 (1974); Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-123, 6 AEC 371, 345 (1973); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-20A, 17 NRC 586, 589 (1983).

Where an intervenor raises a particular contention challenging a licensee's ability to operate a nuclear power plant in a safe manner, the intervenor necessarily assumes the burden of going forward with the evidence to support that contention. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1245 (1984), rev'd in part on other gnds., CLI-85-2, 21 NRC 282 (1985).

An intervenor must come forward with sufficient evidence to require reasonable minds to inquire further, and it has an obligation to reveal pursuant to a discovery

request what the evidence is. That requirement is not obviated by an intervenor's strategic choice to make its case through cross-examination. Seabrook, supra, 17 NRC at 589.

This requirement has, on occasion, been questioned by the courts in those situations in which the information is in the hands of the Staff and/or applicant. See, e.g., York Committee for a Safe Environment v. NRC, 527 F.2d 812 at n.12 (D.C. Cir. 1975).

The scope of the "burden of going forward" rule has also been questioned by the courts. In Aeschliman v. NRC, 547 F.2d 622, 628 (D.C. Cir. 1976), the Court of Appeals indicated that an intervenor, in commenting on a draft EIS, need only bring sufficient attention to an issue "to stimulate the Commission's consideration of it" in order to trigger a requirement that the NRC consider whether the issue should receive detailed treatment in an EIS. The court stated that this test does not support the imposition of the burden of an affirmative evidentiary showing. Id. at n.13. Aeschliman was reversed in this regard by the U.S. Supreme Court in Vermont Yankee Nuclear Power Corp. v. N.R.D.C., 435 U.S. 519 (1978). Therein, the Court held that it is "incumbent upon intervenors who wish to participate to structure their participation so that it is meaningful, so that it alerts the agency to the intervenors' position and contentions." Id. at 553. The Court found that the NRC's use of "a threshold test," requiring intervenors to make a "showing sufficient to require reasonable minds to inquire further," was well within the agency's discretion. Id. at 554. See also Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-693, 16 NRC 952, 957 (1982), citing, Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 553 (1978).

While the outlines of an intervenor's burdens with respect to its contentions may not be fully defined at this point, it is clear that the Commission's rules do not preclude an intervenor from building its case defensively, on the basis of cross-examination. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-463, 7 NRC 341, 356 (1978); Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 389 (1974); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), ALAB-137, 6 AEC 491, 504-505 (1973).

The "threshold test," restored by the Supreme Court in Vermont Yankee Nuclear Power Corp. v. N.R.D.C., 435 U.S. 519 (1978), goes only to the matter of the showing necessary to initiate an inquiry into a specific alternative

which an intervenor (or prospective intervenor) thinks should be explored, and not to the placement of the burden of proof once such an inquiry actually has been undertaken in an adjudicatory context. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 489 at n.8 (1978).

In Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-10, 15 NRC 341, 344 (1982), the Board required intervenors to file a Motion Concerning Litigable Issues, by which the burden of going forward on summary disposition (but not the burden of proof) was placed on the intervenors. However, applicant and Staff would have to respond and intervenors reply. Thereafter, the standard for summary disposition would be the same as required under the rules. This special procedure was appropriate because time pressures had caused the Board to apply a lax standard for admission of contentions, depriving applicants of full notice of the contentions in the proceeding, and because applicants had already shown substantial grounds for summary disposition of all contentions in the course of a hearing that had already been completed. The Motion for Litigable Issues was intended to parallel the Motion for Summary Disposition in all but one respect--that intervenor was required to file first and to come forward with evidence indicating the existence of genuine issues of fact before applicant had to file a summary disposition motion. Applicant retained the burden of proof demonstrating the absence of genuine issues of fact, just as it would if it had originated the summary disposition process by its own motion. Wisconsin Electric power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-88, 16 NRC 1335, 1339 (1982).

3.7.3 Specific Issues - Means of Proof

3.7.3.1 Exclusion Area Controls

The applicant must demonstrate constant total control of the entire exclusion area except for roads and waterways. As to those, only a showing of post-accident control is necessary. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-268, 1 NRC 383, 393-395 (1975). Note also that in certain situations there may be very narrow stretches of land (e.g., a narrow strand of beach below the mean high tide line) the lack of total control of which might readily be viewed as de minimus. Where such a de minimus situation exists, strict application of the constant total control requirements may be inappropriate. Id. at 394-395.

3.7.3.2 Need for Facility

NEPA implicitly requires that a proposed facility exhibit some benefit to justify its construction or licensing. In the case of a nuclear power plant, the plant arguably has no benefit unless it is needed. Thus, a showing of need for the facility is apparently required to justify the licensing thereof. This need can be demonstrated either by a showing that there is a need for additional generating capacity to produce needed power or by a showing that the nuclear plant is needed as a substitute for plants that burn fossil fuels that are in short supply. Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 353-354 (1975). See also Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 327 (1978). A plant may also be justified on the basis that it is needed to replace scarce natural gas as an ultimate energy resource ("i.e., to satisfy residential and business energy requirements now being directly met by natural gas"). Wolf Creek, 7 NRC at 327. In evaluating a utility's load forecast, "the most that can be required is that the forecast be a reasonable one in the light of what is ascertainable at the time made." Wolf Creek, 7 NRC at 328. Because of the uncertainty involved in predicting future demand and the serious consequences of not having generating capacity available when needed, an isolated forecast which is appreciably lower than all others in the record may be accepted only if the Board finds that the isolated ground." Wolf Creek, 7 NRC at 332.

Prior to recent rule changes precluding the consideration of need for power in operating license adjudications, it was held that a change in the need for power at the operating license stage, must be sufficiently extensive to offset the environmental and economic costs of construction before it may be raised as a viable contention. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-35, 14 NRC 682, 684 (1981). Under the recent rule changes, need for power now may be litigated in operating license proceedings only if it is shown, pursuant to 10 CFR § 2.758, that special circumstances warrant waiver of the rules prohibiting litigation of need for power. Georgia Power Co. (Vogtle Nuclear Plant, Units 1 and 2), LBP-84-35, 20 NRC 887, 889-890 (1984), citing, 10 CFR § 51.53(c).

The substitution theory, whereby the need for a nuclear power facility is based on the need to substitute nuclear-generated power for that produced using fossil fuels, has been upheld as providing an adequate basis on which to establish need for the facility. New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 97-98 (1st Cir. 1978).

Considerable weight should be accorded the electrical demand forecast of a State utilities commission that is responsible by law for providing current analyses of probable electrical demand growth and which has conducted public hearings on the subject. A party may have the opportunity to challenge the analysis of such commission. Nevertheless, where the evidence does not show that such analysis is seriously defective or rests on a fatally flawed foundation, no abdication of NRC responsibilities under NEPA results from according conclusive effect to such a forecast. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-490, 8 NRC 234, 240-241 (1978).

The U.S. Supreme Court has noted that there is little doubt that under the Atomic Energy Act of 1954 (AEA), State public utility commissions or similar bodies are empowered to make the initial decision regarding the need for power. Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519 (1978). But this Commission's responsibilities regarding need for power have their primary roots in NEPA rather than the AEA. NEPA does not foreclose the placement of heavy reliance on the judgment of local regulatory bodies charged with the duty of insuring that the utilities within their jurisdiction fulfill the legal obligations to meet customer demands. Rochester Gas and Electric Corporation (Sterling Power Project, Nuclear Unit No. 1), ALAB-502, 8 NRC 383, 388-389 (1978).

3.7.3.3 Burden and Means of Proof in Interim Licensing Suspension Cases

Several cases have set forth the requirements as to burden of proof and burden of going forward in interim licensing suspension cases. These rulings were promulgated in the context of the Commission's General Statement of Policy on the Uranium Fuel Cycle (41 Fed. Reg. 34707, Aug. 16, 1976) but presumably would be applicable in similar contexts that may arise in the future.

In a motion by intervenors for suspension of a construction permit in such a situation, the applicant for the CP has the burden of proof. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-349, 4 NRC 235 (1976); Union Electric Co. (Callaway Plant, Units 1 & 2), ALAB-346, 4 NRC 214 (1976). An applicant faced with such a motion stands in jeopardy of having the motion summarily granted where he does not make an evidentiary showing or even address the relevant factors bearing on the propriety of suspension in his response to the motion. Id. The applicant also has the burden of going forward with evidence. Union Electric Co. (Callaway

Plant, Units 1 & 2), ALAB-348, 4 NRC 225 (1976). This burden of going forward is not triggered by a motion to suspend a CP which fails to state any reason which might support the grant of the motion. Id. On the other hand, the Board's duty to entertain the motion and the applicant's duty to go forward is triggered where the motion contains supporting reasons "sufficient to require reasonable minds to inquire further." Id.

3.7.3.4 Availability of Uranium Supply

In considering the extent of uranium resources, a Board should not restrict itself to established resources which have already been discovered and evaluated in terms of economic feasibility but should consider, in addition, "probable" uranium resources which will likely be available over the next 40 years. The Board should also consider the total number of reactors "currently in operation, under construction, and on order" rather than the number reasonably expected to be operational in the time period under consideration since future reactors will not be licensed unless there is sufficient fuel for them as well as previously licensed reactors. Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 323-25 (1978). See also Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760 (1977) and ALAB-317, 3 NRC 175 (1976).

In order to establish the availability of an uranium supply, a construction permit applicant need not demonstrate that it has a long-term contract for fuel. Union Electric Company (Callaway Plant, Units 1 & 2), ALAB-347, 4 NRC 216, 222 (1976).

3.7.3.5 Environmental Costs

(RESERVED)

3.7.3.5.1 Cost of Withdrawing Farmland from Production

The environmental cost of withdrawing farmland is "deemed to be the costs of the generation (if necessary) of an equal amount of production on other land." Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 335 (1978). The Appeal Board has specifically rejected the analytical approach in which the lost productivity is compared to available national cropland resources as "an 'empty ritual' with a predetermined result" since this approach will always lead to the conclusion that withdrawal will have an insignificant impact. Id. (See also 6.15.6.1.1)

3.7.3.6 Alternate Sites Under NEPA

To establish that no suggested alternative site is "obviously superior" to the proposed site, there must be either (1) an adequate evidentiary showing that the alternative sites should be generically rejected or (2) sufficient evidence for informed comparisons between the proposed site and individual alternatives. Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 498 (1978).

3.7.3.7 Management Capability

Under the Atomic Energy Act, the Commission is authorized to consider a licensee's character or integrity in deciding whether to continue or revoke its operating license. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1207 (1984), rev'd in part on other gnds., CLI-85-2, 21 NRC 282 (1985). A licensee's ethics and technical proficiency are both legitimate areas of inquiry insofar as consideration of the licensee's overall management competence is at issue. Three Mile Island, supra, 19 NRC at 1227.

Areas of inquiry to determine if a utility is capable of operating a facility are outlined in Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-5, 11 NRC 408 (1980); Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18 (1980), reconsidered, ALAB-581, 11 NRC 233 (1980), modified, CLI-80-12, 11 NRC 514 (1980); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-84-13, 19 NRC 659 (1984).

False statements, if proved, could signify lack of management character sufficient to preclude an award of an operating license, at least as long as responsible individuals retained any responsibilities for the project. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-84-20, 19 NRC 1285, 1297 (1984), citing, Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-84-13, 19 NRC 659, 674-75 (1984), and Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-83-2, 17 NRC 69, 70 (1983).

The generally applicable standard for licensee character and integrity is whether there is reasonable assurance that the licensee has the character to operate the facility in a manner consistent with the public health and safety and NRC requirements. To decide that issue, the Commission may consider evidence of licensee behavior having a rational connection to safe operation of the facility and some reasonable relationship to licensee's candor,

truthfulness, and willingness to abide by regulatory requirements and accept responsibility to protect public health and safety. In this regard, the Commission can rest its decision on evidence that past inadequacies have been corrected and that current licensee management has the requisite character. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-9, 21 NRC 1118, 1136-37 (1985).

3.8 Burden of Persuasion (Degree of Proof)

For an applicant to prevail on each factual issue, its position must be supported by a preponderance of the evidence. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-763, 19 NRC 571, 577 (1984), review declined, CLI-84-14, 20 NRC 285 (1984). See Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-463, 7 NRC 341, 360 (1978), reconsideration denied, ALAB-467, 7 NRC 459 (1978); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 405 n.19 (1976).

The burden of persuasion (degree to which a party must convince the Board) should be influenced by the "gravity" of the matter in controversy. Virginia Electric & Power Co. (North Anna Power Station, Units 1, 2, 3 & 4), ALAB-256, 1 NRC 10, 17 at n.18 (1975).

3.8.1 Environmental Effects Under NEPA

It is not necessary that environmental effects be demonstrated with certainty. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 2), ALAB-254, 8 AEC 1184, 1191-92 (1975).

It is appropriate to focus only on whether a partial interim action will increase the environmental effects over those analyzed for the full proposed action where there is no reasonable basis to foresee that the full action will not be permitted in the future. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 445, 629 n.76 (1983).

3.9 Stipulations

10 CFR § 2.753 permits stipulation as to facts in a licensing proceeding. Such stipulations are generally encouraged. See, e.g., Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), CLI-74-2, 7 AEC 2, 3 n.1 (1974). However, in the NEPA context, Licensing Boards retain an independent obligation to assure that NEPA is complied with and its policies protected despite stipulations to that effect. Consolidated Edison Co. of N.Y. (Indian Point Nuclear Generating Station, Unit 3), CLI-75-14, 2 NRC 835, 838 (1975).

3.10 Official Notice of Facts

Under 10 CFR § 2.743(i), official notice may be taken of any fact of which U.S. Courts may take judicial notice. In addition, Licensing Boards may take official notice of any scientific or technical fact within the knowledge of the NRC as an expert body. In any event, parties must have the opportunity to controvert facts which have been officially noticed.

Pursuant to this regulation, Licensing and Appeal Boards have taken official notice of such matters as:

- (1) a statement in a letter from the AEC's General Manager that future releases of radioactivity from a particular reactor would not exceed the lowest limit established for all reactors at the same site. Duquesne Light Co. (Beaver Valley Power Station, Unit 2), LBP-74-25, 7 AEC 711, 733 (1974).
- (2) Commission records, letters from applicants and materials on file in the Public Document Room to establish the facts with regard to the Ginna fuel problem as that problem related to an appeal in another case. Consolidated Edison Co. of N.Y. (Indian Point, Unit 2), ALAB-75, 5 AEC 309, 310 (1972);
- (3) portions of a hearing record in another Commission proceeding involving the same parties and a similar facility design. Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), LBP-74-5, 7 AEC 82, 92 (1974);
- (4) a statement, set forth in a pleading filed by a party in another Commission proceeding, of AEC responses to interrogatories propounded in a court case to which the agency was a party. Duke Power Co., LBP-74-5 supra 7 AEC at 96;
- (5) Staff reports and WASH documents. Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), LBP-74-22, 7 AEC 659, 667 (1974);
- (6) ACRS letters on file in the Public Document Room. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-'23, 6 AEC 331, 332 (1973);
- (7) the existence of an applicant's Federal Water Pollution Control Act Section 401 certificate. Washington Public Power Supply System (Hanford No. 2 Nuclear Power Plant), ALAB-113, 6 AEC 251, 252 (1973).

In most of these cases, the basis for taking official notice was that the document or material noticed was within the knowledge of the Commission as an expert body or was a part of the public records of the Commission (See, e.g., cases cited in items 1, 2, 3, 5 and 6 supra).

In the same vein, it would appear that nothing would preclude a Licensing Board from taking official notice of reports and documents filed with the agency by regulated parties, provided that parties to the proceeding are given adequate opportunity to controvert the matter as to which official notice is taken. See, e.g., Market Street Ry v. Railroad Commission of California, 324 U.S. 548, 562 (1945) (agency's decision based in part on officially noticed monthly operating reports filed with agency by party); State of Wisconsin v. FPC, 201 F.2d 183, 186 (1952), cert. den., 345 U.S. 934 (1953) (regulatory agency can and should take official notice of reports filed with it by regulated company).

10 CFR § 2.743(i) requires that the parties be informed of the precise facts as to which official notice will be taken and be given the opportunity to controvert those facts. Moreover, it is clear that official notice applies to facts, not opinions or conclusions. Consequently, it is improper to take official notice of opinions and conclusions. Niagara Mohawk Power Corp. (Nine Mile Point, Unit 2), LBP-74-26, 7 AEC 758, 760 (1974). While official notice is appropriate as to background facts or facts relating only indirectly to the issues, it is inappropriate as to facts directly and specifically at issue in a proceeding. K. Davis, Administrative Law Treatise, § 15.08.

Official notice of information in another proceeding is permissible where the parties to the two proceedings are identical, there was an opportunity for rebuttal, and no party is prejudiced by reliance on the information. Armed Forces Radiobiology Research Institute (Cobalt-60 Storage Facility), ALAB-682, 16 NRC 150, 154 n.3 (1982), citing, United States v. Pierce Auto Freight Lines, 327 U.S. 515, 527-530 (1945); 10 CFR 2.743 (i).

The use of officially noticeable material is unobjectionable in proper circumstances. 10 CFR § 2.743(i). Interested parties, however, must have an effective chance to respond to crucial facts. Union Electric Co. (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 50 (1983), citing, Carson Products Co. v. Califano, 594 F.2d 453, 459 (5th Cir. 1979).

3.11 Evidence

10 CFR § 2.743 generally delineates the types and forms of evidence which will be accepted and, in some cases must be submitted in NRC licensing proceedings.

Generally, testimony is to be pre-filed in writing before the hearing. Pre-filed testimony must be served on the other parties at least 15 days in advance of the hearing at which it will be presented, though the presiding officer may permit introduction of testimony not so served either with the consent of all parties present or after they have had a reasonable

chance to examine it. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, 2B), ALAB-367, 5 NRC 92 (1977). Note, however, that where the proffering party gives an exhibit to the other parties the night before the hearing and then alters it over objection at the hearing the following day, it is error to admit such evidence since the objecting parties had no reasonable opportunity to examine it. Id.

Technical analyses offered in evidence must be sponsored by an expert who can be examined on the reliability of the factual assertions and soundness of the scientific opinions found in the documents. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 367 (1983), citing, Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 477 (1982). See also Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 754-56 (1977). A Licensing Board may refuse to accept an expert witness' prefiled written testimony as evidence in a licensing proceeding in absence of the expert's personal appearance for cross-examination at the hearing. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1088 n.13 (1983). See generally 10 CFR § 2.718; Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 2); ALAB-27, 4 AEC 652, 658-59 (1971).

3.11.1 Rules of Evidence

While the Federal Rules of Evidence are not directly applicable to NRC proceedings, NRC adjudicatory boards often look to those rules for guidance. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 365 n.32 (1983). See generally Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 475 (1982).

3.11.1.1 Admissibility of Evidence

Evidence is admissible if it is relevant, material, reliable and not repetitious. 10 CFR § 2.743(c). Under this standard, the application for a permit or license is admissible upon authentication. Boston Edison Co. (Pilgrim Nuclear Power Station), ALAB-83, 5 AEC 354, 369 (1972), aff'd sub nom., Union of Concerned Scientists v. AEC, 499 F.2d 1069, 1094 (D.C. Cir. 1974).

A determination on materiality will precede the admission of an exhibit into evidence, but this is not an ironclad requirement in administrative proceedings in which no jury is involved. The determinations of materiality could be safely left to a later date without prejudicing the interests of any new party. Public Service Company of New

Hampshire (Seabrook Station, Units 1 and 2), ALAB-520, 9 NRC 48, 50 n.2 (1979).

The requirement of authentication or identification as a condition precedent to the admissibility of evidence in NRC licensing proceedings is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 365 (1983), citing, Fed. R. Evid. 901(a).

The Final Safety Analysis Report (FSAR) is conditionally admissible as substantive evidence, but once portions of the FSAR are put into controversy, applicants must present one or more competent witnesses to defend them. San Onofre, supra, 17 NRC at 366.

A Licensing Board may refuse to accept an expert witness' prefiled written testimony as evidence in a licensing proceeding in the absence of the expert's personal appearance for cross-examination at the hearing. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1088 n.13 (1983). See generally 10 CFR § 2.718; Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 2), ALAB-27, 4 AEC 652, 658-659 (1971).

In order for expert testimony to be admissible, it need only (1) assist the trier of fact, and (2) be rendered by a properly qualified witness. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1091 (1983). See Fed. R. Evid. 702; Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 475 (1982); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-808, 21 NRC 1595, 1602 (1985).

The fact that a witness is employed by a party, or paid by a party, goes only to the persuasiveness or weight that should be accorded the expert's testimony, not to its admissibility. Waterford, supra, 17 NRC at 1091.

3.11.1.1.1 Admissibility of Hearsay Evidence

Hearsay evidence is generally admissible in administrative proceedings. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 366 (1983); Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), ALAB-355, 4 NRC 397, 411-12 (1976); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-802, 21 NRC 490, 501 n.67

(1985). There is still a requirement, however, that the hearsay evidence be reliable. For example, a statement by an unknown expert to a nonexpert witness which such witness proffers as substantive evidence is unreliable and, therefore, inadmissible. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, 2B), ALAB-367, 5 NRC 92 (1977). In addition to being reliable, hearsay evidence must be relevant, material and not unduly repetitious, to be admissible under 10 CFR § 2.743(c). Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 477 (1982).

3.11.1.2 Hypothetical Questions

Hypothetical questions may be propounded to a witness. Such questions are proper and become a part of the record, however, only to the extent that they include facts which are supported by the evidence or which the evidence tends to prove. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-334, 3 NRC 809, 828-29 (1976).

3.11.1.3 Reliance on Scientific Treatises, Newspapers, Periodicals

An expert may rely on scientific treatises and articles despite the fact that they are, by their very nature, hearsay. Illinois Power Co. (Clinton Power Station, Units 1 & 2), ALAB-340, 4 NRC 27 (1976). The Appeal Board in Clinton left open the question as to whether an expert could similarly rely on newspapers and other periodicals.

3.11.1.4 Off-the-Record Comments

Obviously, nothing can be treated as evidence which has not been introduced and admitted as such. In this vein, off-the-record ex parte communications carry no weight in adjudicatory proceedings and cannot be treated as evidence. Public Service Co., of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 191 (1978).

3.11.1.5 Presumptions and Inferences

With respect to safeguards information, the Commission has declined to permit any presumption that a party who has demonstrated standing in a proceeding cannot be trusted with sensitive information. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-83-40, 18 NRC 93, 100 (1983).

In any NRC licensing proceeding, a FEMA (Federal Emergency Management Agency) finding will constitute a rebuttable

presumption on questions of adequacy and implementation capability of emergency planning. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-61, 18 NRC 700, 702 (1983), citing, 10 CFR § 50.47(a)(2).

When a party has relevant evidence within his control which he fails to produce, it may be inferred that such evidence is unfavorable to him. Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 498 (1978).

3.11.1.6 Government Documents

NRC adjudicatory boards may follow Rule 902 of the Federal Rules of Evidence, waiving the need for extrinsic evidence of authenticity as a precondition to admitting official government documents to allow into evidence government documents. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-520, 9 NRC 48, 49 (1979).

3.11.2 Status of ACRS Letters

Section 182(b) of the Atomic Energy Act of 1954 and 10 CFR § 2.743(g) of the Commission's Rules of Practice require that the Advisory Committee on Reactor Safeguards (ACRS) letter be proffered and received into evidence. However, because the ACRS is not subject to cross-examination, the ACRS letter cannot be admitted for the truth of its contents, nor may it provide the basis for any findings where the proceeding in which it is offered is a contested one. Arkansas Power & Light Co. (Arkansas Nuclear-1, Unit 2), ALAB-94, 6 AEC 25, 32 (1973).

The contents of an ACRS report are not admissible in evidence for the truth of any matter stated therein as to controverted issues, but only for the limited purpose of establishing compliance with statutory requirements. A Licensing Board may rely upon the conclusion of the ACRS on issues that are not controverted by any party. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 367 and n.36 (1983). See also Consumer Power Co. (Midland Plant Units 1 and 2), ALAB-123, 6 AEC 331, 340 (1973).

A Licensing Board may rely upon conclusions of the ACRS on issues that are not controverted by any party. 10 CFR Part 2, Appendix A, § V(f)(1),(2). However, the contents of an Advisory Committee on Reactor Safeguards (ACRS) report cannot, of itself, serve as an underpinning for findings on health and safety aspects of licensing proceedings. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 445, 518 (1983),

citing, Arkansas Power and Light Co. (Arkansas Nuclear One, Unit 2), ALAB-94, 6 AEC 25, 32 (1973).

3.11.3 Presentation of Evidence by Intervenors

An intervenor may not adduce affirmative evidence on an issue that he has not raised himself unless and until he amends his contentions. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 869 at n.17 (1974). Nevertheless, an intervenor may cross-examine a witness on those portions of his testimony which relate to matters that have been placed in controversy by any party to the proceeding as long as the intervenor has a discernible interest in the resolution of the particular matter. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-75-1, 1 NRC 1 (1975), affirming ALAB-244, 8 AEC 857, 867-888 (1974).

3.11.4 Evidentiary Objections

Objections to particular evidence or the manner of presentation thereof must be made in a timely fashion. Failure to object to evidence bars the subsequent taking of exceptions to its admission. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-335, 3 NRC 830, 842 at n.26 (1976). To preserve a claim of error on an evidentiary ruling, a party must interpose its objection and the basis therefore clearly and affirmatively. If a party appears to acquiesce in an adverse ruling and does not insist clearly on the right to introduce evidence, the Appeal Board will not find that the evidence was improperly excluded. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-463, 7 NRC 341, 362 n.90 (1978).

3.12 Witnesses at Hearing

Because of the complex nature of the subject matter in NRC hearings, witness panels are often utilized. It is recognized in such a procedure that no one member of the panel will possess the variety of skills and experience necessary to permit him to endorse and explain the entire testimony. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-379, 5 NRC 565, 569 (1977).

The testimony and opinion of a witness who claims no personal knowledge of, or expertise in, a particular aspect of the subject matter of his testimony will not be accorded the weight given testimony on that question from an expert witness reporting results of careful and deliberate measurements. Public Service Electric & Gas Company (Hope Creek Generating Station, Units 1 & 2), LBP-78-15, 7 NRC 642, 647 n.8 (1978).

While a Licensing Board has held that prepared testimony should be the work and words of the witness, not his counsel, Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-81-63, 14 NRC 1768, 1799 (1981), the Appeal Board has made it clear that what is important is not who originated the words that comprise the prepared testimony but rather whether the witness can truthfully attest that the testimony is complete and accurate to the best of his or her knowledge. Midland, ALAB-691, 16 NRC 897, 918 (1982).

Where technical issues are being discussed, Licensing Boards are encouraged during rebuttal and surrebuttal to put opposing witnesses on the stand simultaneously so they may respond immediately on an opposing witness' answer to a question. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981).

Where the credibility of evidence turns on the demeanor of a witness, an appellate board will give the judgment of the trial board, which saw and heard the testimony, particularly great deference. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1218 (1984), rev'd in part on other gnds., CLI-85-2, 21 NRC 282 (1985). However, demeanor evidence is of little value where other testimony, documentary evidence, and common sense suggest a contrary result. Three Mile Island, supra, 19 NRC at 1218.

3.12.1 Compelling Appearance of Witness

10 CFR § 2.720 provides that, pursuant to proper application by a party, a Licensing Board may compel the attendance and testimony of a witness by the issuance of a subpoena.

The Rules of Practice preclude a Licensing Board from declining to issue a subpoena on any basis other than that the testimony sought lacks "general relevance." In ruling on a request for a subpoena, the Board is specifically prohibited from attempting "to determine the admissibility of evidence." 10 CFR § 2.720(a); Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 93 (1977).

3.12.1.1 NRC Staff as Witnesses

The provisions of 10 CFR § 2.720(a)-(g) for compelling attendance and testimony do not apply to NRC Commissioners or Staff. 10 CFR § 2.720(h). Nevertheless, once a Staff witness has appeared, he may be recalled and compelled to testify further, despite the provisions of 10 CFR § 2.720(h), if it is established that there is a need for the additional testimony on the subject matter. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 391 (1974).

3.12.1.2 ACRS Members as Witnesses

Members of the ACRS are not subject to examination in an adjudicatory proceeding with regard to the contents of an ACRS Report. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 766 at n.10 (1977).

The Appeal Board, at intervenors' request, directed that certain consultants to the ACRS appear as witnesses in the proceeding before the Board. Such an appearance was proper under the circumstances of the case, since the ACRS consultants had testified via subpoena at the licensing board level at intervenors request. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-604, 12 NRC 149, 150-51 (1980).

3.12.2 Sequestration of Witnesses

In Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-379, 5 NRC 565 (1977), the Appeal Board considered a Staff request for discretionary review of a Licensing Board ruling which excluded prospective Staff witnesses from the hearing room while other witnesses testified. The Appeal Board noted that while sequestration orders must be granted as a matter of right in Federal district court cases, NRC adjudicatory proceedings are clearly different in that direct testimony is generally pre-filed in writing. As such, all potential witnesses know in advance the basic positions to be taken by other witnesses. In this situation, the value of sequestration is reduced. Moreover, the highly technical and complex nature of NRC proceedings often demands that counsel have the aid of expert assistance during cross-examination of other parties' witnesses.

In view of these considerations, the Appeal Board held that sequestration is only proper where there is some countervailing purpose which it could serve. The Board found no such purpose in this case, but in fact, found that sequestration here threatened to impede full development of the record. As such, the Licensing Board's order was overturned. The Appeal Board also noted that there may be grounds to distinguish between Staff witnesses and other witnesses with respect to sequestration, with the Staff being less subject to sequestration than other witnesses, depending on the circumstances.

3.12.3 Board Witnesses

The Appeal Board has indicated that where an intervenor would call a witness but for the intervenor's financial inability to do so, the Licensing Board may call the witness as a Board witness and authorize NRC payment of the

usual witness fees and expenses. The decision to take such action is a matter of Licensing Board discretion which should be exercised with circumspection. If the Board calls such a witness as its own, it should limit cross-examination to the scope of the direct examination. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-382, 5 NRC 603, 607-08 (1977).

In the interest of a complete record, the Appeal Board may order the Staff to submit written testimony from a "knowledgeable witness" on a particular issue in a proceeding. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-607, 12 NRC 165, 167 (1980).

A Licensing Board should not call upon independent consultants to supplement an adjudicatory record except in that most extraordinary situation in which it is demonstrated that the Board cannot otherwise reach an informed decision on the issue involved. Part 2 of 10 CFR and Appendix A both give the Staff a dominant role in assessing the radiological health and safety aspects of facilities involved in licensing proceedings. Before an adjudicatory board resorts to outside experts of their own, they should give the NRC Staff every opportunity to explain, correct and supplement its testimony. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-663, 14 NRC 1140, 1146, 1156 (1981). See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1247 (1984) rev'd in part on other gnds., CLI-85-2, 21 NRC 282 (1985). Thus, while Licensing Boards have the authority to call witnesses of their own, the exercise of this discretion must be reasonable and, like other Licensing Board rulings, is subject to appellate review. A Board may take this extraordinary action only after (1) giving the parties to the proceeding every fair opportunity to clarify and supplement their previous testimony, and (2) showing why it cannot reach an informed decision without independent witnesses. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-710, 17 NRC 25, 27-28 (1983).

Applying the criteria of Summer, supra, 14 NRC at 1156, 1163, a Licensing Board determined that it had the authority to call an expert witness to focus on matters the Staff had apparently ignored in a motion for summary disposition of a health effects contention. Carolina Power & Light Co. and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Plant, Units 1 and 2), LBP-84-7, 19 NRC 432, 442-43 (1984), reconsid. den. on other grounds, LBP-84-15, 19 NRC 837, 838 (1984).

3.12.4 Expert Witnesses

When the qualifications of an expert witness are challenged, the party sponsoring the witness has the burden of demonstrating his expertise. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, NRC 1398, 1405 (1977). The qualifications of the expert should be established by showing either academic training or relevant experience or some combination of the two. Pacific Gas and Electric Company, (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-78-36, 8 NRC 567, 570 (1978). As to academic training, such training that bears no particular relationship to the matters for which an individual is proposed as an expert witness is insufficient, standing alone, to qualify the individual as an expert witness on such matters. Diablo Canyon, LBP-78-36, 8 NRC at 571. In addition, the fact that a proposed expert witness was accepted as an expert on the subject matter by another Licensing Board in a separate proceeding does not necessarily mean that a subsequent Board will accept the witness as an expert. Diablo Canyon, LBP-78-36, 8 NRC at 572.

The value of testimony by a witness at NRC proceedings is not undermined merely by the fact that the witness is a hired consultant of a licensee. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1211 (1984), rev'd in part on other gnds., CLI-85-2, 21 NRC 282 (1985).

It is not acceptable for an expert witness to state his ultimate conclusions on a crucial aspect of the issue being tried, and then to profess an inability--for whatever reason--to provide the foundation for them to the decision maker and litigants. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-555, 10 NRC 23, 26 (1979). An assertion of "engineering judgment", without any explanation or reasons for the judgment, is insufficient to support the conclusions of an expert engineering witness. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-81, 18 NRC 1410, 1420 (1983), modified on reconsid. sub nom., LBP-84-10, 19 NRC 509, 518, 532 (1984).

A witness testifying to the results of an analysis need not have at hand every piece of datum utilized in performing that analysis. In this area, a rule of reason must be applied. It is not unreasonable, however, to insist that, where the outcome on a clearly defined and substantial safety or environmental issue may hinge upon the acceptance or rejection of an expert conclusion resting

in turn upon a performed analysis, the witness make available (either in his prepared testimony or on the stand) sufficient information pertaining to the details of the analysis to permit the correctness of the conclusion to be evaluated. North Anna, supra, at 27.

A Licensing Board may refuse to accept an expert witness' prefiled written testimony as evidence in a licensing proceeding in the absence of the expert's personal appearance for cross-examination at the hearing. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1088 n.13 (1983). See generally 10 CFR § 2.718; Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 2), ALAB-27, 4 AEC 652, 658-59 (1971).

3.12.4.1 Fees for Expert Witnesses

Commission regulations provide for expert witness fees in connection with depositions (10 CFR § 2.740(h)) and for subpoenaed witnesses (10 CFR § 2.720(d)). Although these regulations specify that the fees will be those "paid to witnesses in the district courts of the United States," there had been some uncertainty as to whether the fees referred to were the statutory fees of 28 U.S.C. § 1821 or the expert witness fees of Rule 26 of the Federal Rules of Civil Procedure. In Public Service Co. of Oklahoma (Black Fox, Units 1 and 2), LBP-77-18, 5 NRC 671 (1977), the Licensing Board ruled that the fees referred to in the regulations were the statutory fees. The Board suggested that payment of expert witness fees is especially appropriate when the witness was secured because of his experience and when the witness' expert opinions would be explored during the deposition or testimony. The Board relied on 10 CFR § 2.720(f), which permits conditioning denial of a motion to quash subpoenas on compliance with certain terms and conditions which could include payment of witness fees, and on 10 CFR § 2.740(c), which provides for orders requiring compliance with terms and conditions, including payment of witness fees, prior to deposition.

3.13 Cross-Examination

Cross-examination must be limited to the scope of the contentions admitted for litigation and can appropriately be limited to the scope of direct examination. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1096 (1983), citing, Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-673, 15 NRC 688, 698, affirmed, CLI-82-11, 15 NRC 1363 (1982); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 867, 869 (1974); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 376 (1985).

In exercising its discretion to limit what appears to be improper cross-examination, a Licensing Board may insist on some offer of proof or other advance indication of what the cross-examiner hopes to elicit from the witness. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1096 (1983), citing, Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-461, 7 NRC 313, 316 (1978); San Onofre, supra, 15 NRC at 697; Prairie Island, supra, 8 AEC at 869.

The authority of a Board to demand cross-examination plans is encompassed by the Board's power to control the conduct of hearings and to take all necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination. 10 CFR §§ 2.718(e), 2.757(c). Such plans are encouraged by the Commission as a means of making a hearing more efficient and expeditious. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 377 (1985).

Even if cross-examination is wrongly denied, such denial does not constitute prejudicial error per se. The complaining party must demonstrate actual prejudice, i.e., that the ruling had a substantial effect on the outcome of the proceeding. Waterford, supra, 17 NRC at 1096; San Onofre, supra, 15 NRC at 697 n.14; San Onofre, supra, 15 NRC at 1384; Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-788, 20 NRC 1102, 1151 (1984); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 376-77 (1985).

Cross-examination, though subject to restriction, is a fundamental right conferred on parties to formal adjudication in NRC proceedings by the Administrative Procedure Act and by the Commission's Rules of Practice. Cross-examination during a deposition, which might suffice under truly exceptional circumstances, is not otherwise a ready substitute for cross-examination before the presiding officer. Consolidated Edison Co. of New York (Indian Point, Unit 2) and Power Authority of the State of New York (Indian Point, Unit 3), LBP-83-29, 17 NRC 1117, 1120 (1983).

3.13.1 Cross-Examination By Intervenors

The ability to conduct cross-examination in an adjudication is not such a fundamental right that its denial constitutes prejudicial error per se. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-82-11, 15 NRC 1383, 1384 (1982).

An intervenor may cross-examine a witness on those portions of his testimony which relate to matters that have been placed in controversy by any party to the proceeding, as long as the intervenor has a discernible interest in the resolution of the particular matter. Northern States

Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-75-1, 1 NRC 1 (1975), affirming, ALAB-244, 8 AEC 857 (1974). In the case of a reopened proceeding, permissible inquiry through cross-examination necessarily extends to every matter within the reach of the testimony submitted by the applicants and accepted by the Board. Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 24 (1977).

It is error to preclude cross-examination on the ground that intervenors have the burden of proving the validity of their contentions through their own witnesses since it is clear that intervenors may build their case "defensively" through cross-examination. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-463, 7 NRC 341, 356 (1978); Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-20, 21 NRC 1732, 1745 (1985).

Calculations underlying a mathematical estimate which is in controversy are clearly relevant since they may reveal errors in the computation of that estimate. Hartsville, supra, 7 NRC at 355-56. A Licensing Board might be justified in denying a motion to require production of such calculations to aid cross-examination on the estimate as a matter of discretion in regulating the course of the hearing. See, e.g., Illinois Power Co. (Clinton Power Station, Units 1 & 2), ALAB-340, 4 NRC 27, 32-36 (1976). However, an Appeal Board will not affirm a decision to cut off cross-examination on the basis that it was within the proper limits of a Licensing Board's discretion when the record does not indicate that the Licensing Board considered this discretionary basis. Hartsville, supra, 7 NRC at 356.

An intervenor's cross-examination may not be used to expand the number or scope of contested issues. Prairie Island, supra, 8 AEC at 867. To assure that cross-examination does not expand the boundaries of issues, a Licensing Board may:

- (1) require in advance that an intervenor indicate what it will attempt to establish on cross-examination;
- (2) limit cross-examination if the Board determines that it will be of no value for development of a full record on the issues;
- (3) halt cross-examination which makes no contribution to development of a record on the issues; and
- (4) consolidate intervenors for purposes of cross-examination on the same point where it is appropriate to do so in accordance with the provisions of 10 CFR § 2.715a.

Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-252, 8 AEC 1175, aff'd, CLI-75-1, 1 NRC 1 (1975).

While an intervenor has a right to cross-examine on any issue in which he has a discernible interest, the Licensing Board has a duty to monitor and restrict such cross-examination to avoid repetition. CLI-75-1 supra, 1 NRC 1. The Board is explicitly authorized to take the necessary and proper measures to prevent argumentative, repetitious or cumulative cross-examination, and the Board may properly limit cross-examination which is merely repetitive. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-367, 5 NRC 92 (1977); Prairie Island, supra, ALAB-244, 8 AEC 857, 868. Moreover, cross-examination must be strictly limited to the scope of the direct examination. Prairie Island, CLI-75-1, 1 NRC 1 and ALAB-244, 8 AEC 857 at 867. As a general proposition, no party has a right to unfettered or unlimited cross-examination and cross-examination may not be carried to unreasonable lengths. The test is whether the information sought is necessary for a full and true disclosure of the facts. Prairie Island, supra, ALAB-244, 8 AEC 857, 869 at n.16. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-107, 16 NRC 1667, 1674-1675 (1982), citing, Section 181 of the Atomic Energy Act; Section 7(c) of the APA, 5 U.S.C. § 556(d). This limitation applies equally to cross-examination on issues raised sua sponte by the Licensing Board in an operating license proceeding. Id. at 8 AEC 869.

The scope of cross-examination and the parties that may engage in it in particular circumstances are matters of Licensing Board discretion. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-461, 7 NRC 313, 316 (1978).

Unnecessary cross-examination may be limited by a Licensing Board, in its discretion, to expedite the orderly presentation of each party's case. Cross-examination plans (submitted to the Board alone) are encouraged, as are trial briefs and pre-filed testimony outlines. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981).

Licensing Boards are authorized to establish reasonable time limits for the examination of witnesses, including cross-examination, under 10 CFR §§ 2.718(c) and 2.757(c), Commission's Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981) and relevant judicial decisions. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-84-24, 19 NRC 1418, 1428

(1984). See MCI Communications Corp. v. AT&T, 85 F.R.D. 28 (N.D. Ill. 1979), aff'd, 708 F.2d 1081, 1170-73 (7th Cir. 1982).

A Licensing Board has the authority to direct that parties to an operating license proceeding conduct their initial cross-examination by means of prehearing examinations in the nature of depositions. Pursuant to 10 CFR § 2.718, a Board has the power to regulate the course of the hearing and the conduct of the participants, as well as to take any other action consistent with the APA. See also 10 CFR § 2.757, 10 CFR Part 2, App. A, IV. In expediting the hearing process using the case management method contained in Part 2, a Board should ensure that the hearings are fair, and produce a record which leads to high quality decisions and adequately protects the public health and safety and the environment. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-107, 16 NRC 1667, 1677 (1982), citing, Statement of Policy, supra, 13 NRC at 453.

In considering whether to impose controls on cross-examination, questions raised by the applicant concerning the adequacy of the Staffs of the Appeal Board or Commission to review a lengthy record, either on appeal or sua sponte, should not be taken into account. To the extent that cross-examination may contribute to a meaningful record, it should not be limited to accommodate asserted staffing deficiencies within NRC. Consumers Power Co. (Midland Plant Units 1 and 2), LBP-83-28, 17 NRC 987, 992 (1983).

3.13.2 Cross-Examination by Experts

The rules of practice permit a party to have its cross-examination of others performed by individuals with technical expertise in the subject matter of the cross-examination provided that the proposed interrogator is shown to meet the requirements set forth in 10 CFR § 2.633(a). An expert interrogator need not meet the same standard of expertise as an expert witness. The standard for interrogators under 10 CFR § 2.733(a) is that the individual "is qualified by scientific training or experience to contribute to the development of an adequate decisional record in the proceeding by the conduct of such examination or cross-examination." The Regents of the University of California (UCLA Research Reactor), LBP-81-29, 14 NRC 353, 354-55 (1981).

3.13.3 Inability to Cross-Examine as Grounds to Reopen

Where a Licensing Board holds to its hearing schedule despite a claim by an intervenor that he is unable to

prepare for the cross-examination of witnesses because of scheduling problems, the proceeding will be reopened to allow the intervenor to cross-examine witnesses. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1) ALAB-249, 8 AEC 980 (1974).

3.14 Record of Hearing

It is not necessary for legal materials, including the Standard Review Plan, Regulatory Guides, documents constituting Staff guidance, and industry code sections applicable to a facility, to be in the evidentiary record. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-55, 18 NRC 415, 418 (1983).

3.14.1 Supplementing Hearing Record by Affidavits

Appeal Boards will not permit gaps in the record to be filled by affidavit where the issue is technical and complex. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-284, 2 NRC 197, 205-06 (1975).

There is no significance to the content of affidavits which do not disclose the identity of individuals making statements in the affidavit. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 2), ALAB-525, 9 NRC 111, 114 (1979).

3.14.2 Reopening Hearing Record

If a Licensing Board believes that circumstances warrant reopening the record for receipt of additional evidence, it has discretion to take that course of action. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741 (1977). It may do so, for example, in order to receive additional documents in support of motion for summary disposition where the existing record is insufficient. Id. at 752. For a discussion of reopening, see Section 4.4.

Reopening a record is an extraordinary action. To prevail, the petitioners must demonstrate that their motions are timely, that the issues they seek to litigate are significant, and that the information they seek to add to the record would change the results. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-82-34A, 15 NRC 914, 915 (1982); Union Electric Co. (Callaway Plant, Unit 1), ALAB-750, 18 NRC 1205, 1207 (1983); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB 775, 19 NRC 1361, 1365-66 (1984). See also Metropolitan Edison Co.

(Three Mile Island Nuclear Station, Unit 1), ALAB-807 21 NRC 1195, 1216 (1985).

Even though a matter is timely raised and involves significant safety considerations, no reopening of the evidentiary hearing will be required if the affidavits submitted in response to the motion demonstrate that there is no genuine unresolved issue of fact, i.e., if the undisputed facts establish that the apparently significant safety issue does not exist, has been resolved, or for some other reason will have no effect upon the outcome of the licensing proceeding. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-83-41, 18 NRC 104, 109 (1983).

A motion to reopen the evidentiary record because of previously undiscovered conclusions of an NRC Staff inspection group must establish the existence of differing technical bases for the conclusions. The conclusions alone would be insufficient evidence to justify reopening of the record. Three Mile Island, supra at §16.

Reopening the record is within the Licensing Board's discretion and need not be done absent a showing that the outcome of the proceeding might be affected and that reopening the record would involve issues of major significance. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-46, 15 NRC 1531, 1535 (1982), citing, Public Service Co. of Oklahoma (Black Fox Station), 10 NRC 775, 804 (1978); Public Service Co. of New Hampshire (Seabrook Station), 6 NRC 33, 64, n.35 (1977); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Station), ALAB-138, 6 AEC 520, 523 (1973).

After the record is closed in an operating license proceeding, where parties proffering new contentions do not meet legal standards for further hearings, that the contentions raise serious issues is insufficient justification to reopen the record to consider them as Board issues when the contentions are being dealt with in the course of ongoing NRC investigation and Staff monitoring. Cincinnati Gas and Electric Co. (Wm. H. Zimmer Nuclear Power Station, Unit 1), CLT-82-20, 16 NRC 109, 110 (1982). See LBP-82-54, 16 NRC 210.

Although the standard for reopening the record in an NRC proceeding has been variously stated, the traditional standard requires that (1) the motion be timely, (2) significant new evidence of a safety question exist, and (3) the new evidence might materially affect the outcome. Pacific Gas and Electric Co. (Diablo Canyon Nuclear

Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 800 n.66 (1983), review denied, CLI-83-32, 18 NRC 1309 (1983); Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-83-41, 18 NRC 104, 108 (1983); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 445, 476 (1983); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1260 (1984), rev'd in part on other gnds., CLI-85-2, 21 NRC 282 (1985); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-774, 19 NRC 1350, 1355 (1984); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 285 n.3 (1985); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-8, 21 NRC 1111, 1113 (1985).

The traditional standard for reopening applies in determining whether a record should be reopened on the basis of new information. The standard does not apply where the issue is whether the record should be reopened because of an inadequate record. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 285 n.3 (1985).

The Board must be persuaded that a serious safety matter is at stake before it is appropriate for it to require supplementation of the record. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-55, 18 NRC 415, 418 (1983).

In proceedings where the evidentiary record has been closed, the record should not be reopened on TMI related issues relating to either low or full power absent a showing, by the moving party, of significant new evidence not included in the record, that materially affects the decision. Bare allegations or simple submission of new contentions is not sufficient, only significant new evidence requires reopening. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2) ALAB-728, 17 NRC 777, 803 (1983), review denied, CLI-83-32, 18 NRC 1309 (1983).

The factors to be applied in reopening the record are not necessarily additive. Even if timely, the motion may be denied if it does not raise an issue of major significance. However, a matter may be of such gravity that the motion to reopen should be granted notwithstanding that it might have been presented earlier. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1143 (1983), citing, Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973).

Newspaper allegations of quality assurance deficiencies, unaccompanied by evidence, ordinarily are not sufficient grounds for reopening an evidentiary record. Cleveland

Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-84-3, 19 NRC 282, 286 (1984).

3.14.3 Material Not Contained in Hearing Record

Adjudicatory decisions must be supported by evidence properly in the record. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-580, 11NRC 7, 230 (1980). Neither the Licensing Board nor the Appeal Board may base a decision on factual material which has not been introduced into evidence. However, if extra-record material raises an issue of possible importance to matters such as public health, the Appeal Board may examine it. If this examination creates a serious doubt about the decision reached by the Licensing Board, the Appeal Board may order that the record be reopened for the taking of supplementary evidence. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-463, 7 NRC 341, 351-352 (1978).

Whether or not proffered affidavits would leave the Licensing Board's result unchanged, simple equity precludes the Appeal Board from reopening the record in aid of intervenors' apparent desire to attack the decision below on fresh grounds. Where the presentation of new matter to supplement the record is untimely, its possible significance to the outcome of the proceeding is of no moment, at least where the issue to which it relates is devoid of grave public health and safety or environmental implications. Puerto Rico Electric Power Authority (North Coast Nuclear Power Plant, Unit 1), ALAB-648, 14 NRC 34, 38-39 (1981), citing, Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974); and Hartsville, supra.

3.15 Interlocutory Review via Directed Certification

As a general rule, interlocutory appeals during a pending proceeding are not permitted. 10 CFR § 2.730(f). However, a party may seek interlocutory review by filing a petition for certification as to any question deserving early dispositive resolution. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-271, 1 NRC 478, 482-83 (1975). The issues that may be certified are not limited to those that have not yet been considered and ruled upon by the presiding Licensing Board. Id. In fact, the Appeal Board will be disinclined to direct certification unless and until the Licensing Board has been given a reasonable opportunity to decide the issue itself. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Unit 1), ALAB-297, 2 NRC 727 (1975). An exception to this rule will be made in compelling circumstances where, for example,

there is an emergency situation requiring an immediate, final determination of the issue. Id. The practice of simultaneously seeking interlocutory appellate review of grievances by way of directed certification and Licensing Board reconsideration of the same rulings is disfavored. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-630, 13 NRC 84, 85 (1981).

The only procedural vehicle by which a party may seek review of interlocutory matters is a request for directed certification. The exercise of an Appeal Board's discretionary authority to grant directed certification is reserved for important Licensing Board rulings that, absent immediate appellate review, threaten a party with serious irreparable harm or pervasively affect the basic structure of the proceeding. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-736, 18 NRC 165, 166 n.1 (1983).

To obtain certification for an interlocutory review, the party seeking it must show that, without such certification, the public interest will suffer or unusual delay or expense will be encountered. 10 CFR § 2.730(f); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-271, 1 NRC 478 (1975).

This showing is not made merely by a demonstration that a Licensing Board promulgated an interlocutory, non-appealable pronouncement at variance with previous rulings of other boards, unless some special circumstance makes immediate elimination of the decisional conflict imperative. Id.

Developments occurring subsequent to the filing of a motion for directed certification to the Appeal Board may strip the question raised in the motion for certification of an essential ingredient and, therefore, constitute grounds for denial of the motion. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-419, 6 NRC 3, 6 (1977).

Appeal Boards undertake discretionary interlocutory review of a Licensing Board ruling only where such ruling either (1) threatens the party adversely affected by it with immediate and serious irreparable impact which as a practical matter, could not be alleviated by a later appeal or (2) affects the basic structure of the proceeding in a pervasive or unusual manner. Puget Sound Power & Light Co. (Skagit Nuclear Power Project, Units 1 & 2), ALAB-572, 10 NRC 693, 694 (1979); Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-735, 18 NRC 19, 23 (1983), citing, Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977).

The Appeal Boards' certification authority was not intended to be applied to a mixed question of law and fact in which the factual element was predominant. Public Service Company of

Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977).

The Commission's Rules of Practice, 10 CFR § 2.714a, prohibit a person from taking an interlocutory appeal from an order entered on his intervention petition unless that order has the effect of denying the petition in its entirety. Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 & 2), ALAB-621, 12 NRC 578, 579 (1980).

3.16 Licensing Board Findings

The findings of a Licensing Board must be supported by reliable, probative and substantial evidence in the record. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 2), ALAB-254, 8 AEC 1184 (1975). It is well settled that the possibility that inconsistent or even contrary views could be drawn if the views of an opposing party's experts were accepted does not prevent the Licensing Board's findings from being supported by substantial evidence. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-303, 2 NRC 858, 866 (1975).

A Licensing Board is free to decide a case on a theory different from that on which it was tried but when it does so, it has a concomitant obligation to bring this fact to the attention of the parties before it and to afford them a fair opportunity to present argument, and where appropriate, evidence. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-455, 7 NRC 41, 55-56 (1978); Niagara Mohawk Power Co. (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 354 (1975). Note that as to a Licensing Board's findings, the Appeal Board has authority to make factual findings on the basis of record evidence which are different from those reached by a Licensing Board and can issue supplementary findings of its own. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 42 (1977). The Appeal Board decision can be based on grounds completely foreign to those relied upon by the Licensing Board so long as the parties had a sufficient opportunity to address those new grounds with argument and/or evidence. Id. In any event, neither the Licensing Board nor the Appeal Board may base a decision on factual material which has not been introduced into evidence. Otherwise, other parties would be deprived of the opportunity to impeach the evidence through cross-examination or to refute it with other evidence. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-463, 7 NRC 341, 351-52 (1978).

The Board's initial decision should contain record citations to support the findings. Virginia Electric & Power Co. (North Anna Power Station, Units 1, 2, 3, & 4), ALAB-256, 1 NRC 10, 14 at n.8 (1975). Despite the fact that a number of older cases have held that a Licensing Board is not required to rule specifically on each finding proposed by the parties (see Boston Edison Co.

(Pilgrim Nuclear Power Station), ALAB-83, 5 AEC 354, 369 (1972), aff'd sub nom., Union of Concerned Scientists v. AEC, 449 F.2d 1069 (D.C. Cir 1974); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), ALAB-78, 5 AEC 319, 321 (1972)), the Appeal Board has indicated that a Licensing Board must clearly state the basis for its decision and, in particular, state reasons for rejecting certain evidence in reaching the decision. Public Service Co. of N.H. (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33 (1977). While the Seabrook Appeal Board found that the deficiencies in the initial decision were not so serious as to require reversal, especially in view of the fact that the Appeal Board itself can make findings of fact where necessary, the Appeal Board made it clear that a Licensing Board's blatant failure to follow the Appeal Board's direction in this regard is ground for reversal of the Licensing Board's decision.

Notwithstanding its authority to do so, the Appeal Board will normally be reluctant to search the record to determine whether it included sufficient information to support conclusions for which the Licensing Board failed to provide adequate justification. A remand, very possibly accompanied by an outright vacation of the result reached below, would be the usual course where the Licensing Board's decision does not adequately support the conclusions reached therein. Seabrook, supra, 6 NRC 33 at 42. Note, however, that in at least one case the Appeal Board did search the record where (1) the Licensing Board's decision preceded the Appeal Board's decision in Seabrook which clearly established this policy and (2) it did not take an extended period of time for the Appeal Board to conduct its own evaluation. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, 2B), ALAB-463, 7 NRC 341, 368 (1978).

The Appeal Board's admonition that Licensing Boards must clearly set forth the basis for their decisions applies to a Board's determination with respect to alternatives under NEPA. Thus, although a Licensing Board may utilize its expertise in selecting between alternatives, some explanation is necessary. Otherwise, the requirement of the Administrative Procedure Act that conclusions be founded upon substantial evidence and based on reasoned findings "become[s] lost in the haze of so-called expertise." Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 66 (1977).

When evidence is presented to the Licensing Board in response to an Appeal Board instruction that a matter is to be investigated, the Licensing Board is obligated to make findings and issue a ruling on the matter. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-463, 7 NRC 341, 368 (1978).

In Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 492 (1978), the Appeal Board reiterated that the bases for decisions must be set forth in

detail, noting that, in carrying out its NEPA responsibilities, an agency "must go beyond mere assertions and indicate its basis for them so that the end product is" an informed and adequately explained judgment.

Licensing Boards have an obligation "to articulate in reasonable detail the basis for [their] determination." A substantial failure of the Licensing Board in this regard can result in the matter being remanded for reconsideration and a full explication of the reasons underlying whatever result that Board might reach upon such reconsideration. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-504, 8 NRC 406, 410-412 (1978).

The fact that a Licensing Board poses questions requiring that evidence be produced at the hearing in response to those questions does not create an inviolate duty on the part of the Board to make findings specifically addressing the subject matter of the questions. Portland General Electric Company (Trojan Nuclear Plant), LBP-78-32, 8 NRC 413, 416 (1978).

A Licensing Board decision which rests significant findings on expert opinion not susceptible of being tested on examination of the witness is a fit candidate for reversal. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-555, 10 NRC 23, 26 (1979).

Licensing Boards passing on construction permit applications must be satisfied that requirements for an operating license, including those involving management capability, can be met by the applicant at the time such license is sought. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18, 26-28 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

Where evidence may have been introduced by intervenors in an operating license proceeding, but the construction permit Licensing Board made no explicit findings with regard to those matters, and at the construction permit stage the proceeding was not contested, the operating license Licensing Board will decline to treat the construction permit Licensing Board's general findings as an implicit resolution of matters raised by intervenors. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 79 n.6 (1979).

In order to avoid unnecessary and costly delays in starting the operation of a plant, a Board may conduct and complete operating license hearings prior to the completion of construction of the plant. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-811, 21 NRC 1622, 1627 (1985), citing, Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981). Thus, a Board must make some predictive findings and, "in effect, approve applicant's present plans for future

regulatory compliance." Diablo Canyon, supra, 21 NRC at 1627, citing, Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-653, 16 NRC 55, 79 (1981).

There is no requirement mandated by the Atomic Energy Act nor the Commission's regulations that a Licensing Board may not resolve a contested issue if any form of confirmatory analysis is ongoing as of the close of the record on that issue, where a Licensing Board is able to make the basic findings prerequisite to the issuance of an operating license based on the existing record. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 445, 519 (1983), citing, Consolidated Edison Co. of New York (Indian Point Station, Unit 2), CLI-74-23, 7 AEC 947, 951-52 (1974) and Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-461, 7 NRC 313, 318 (1978); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-811, 21 NRC 1622, 1627-28 (1985), citing, Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-781, 20 NRC 819 (1984).

Rulings and findings made in the course of a proceeding are not in themselves sufficient reasons to believe that a tribunal is biased for or against a party. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903, 923 (1981).

3.16.1 Independent Calculations by Licensing Board

A Board is free to draw conclusions by applying known engineering principles to and making mathematical calculations from facts in the record whether or not any witness purported to attempt this exercise. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-229, 8 AEC 425, 437, rev. on other gnds., CLI-74-40, 8 AEC 809 (1974). However, the Board must adequately explain the basis for its conclusions. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 66 (1977).

3.17 Res Judicata and Collateral Estoppel

Although the judicially developed doctrine of res judicata is not fully applicable in administrative proceedings, the considerations of fairness to parties and conservation of resources embodied in this doctrine are relevant. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 27 (1978), citing, Houston Lighting and Power Company (South Texas Project, Units 1 and 2), CLI-77-13, 5 NRC 1303, 1321 (1977).

Thus, as a general rule, it appears that res judicata principles may be applied, where appropriate, in NRC adjudicatory proceedings. Consistent with those principles, res judicata does not apply

when the foundation for a proposed action arises after the prior ruling advanced as the basis for res judicata or when the party seeking to employ the doctrine had the benefit, when he obtained the prior ruling, of a more favorable standard as to burden of proof than is now available to him. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-349, 4 NRC 235 (1976).

The common law rules regarding res judicata do not apply, in a strict sense, to administrative agencies. Res judicata need not be applied by an administrative agency where there are overriding public policy interests which favor relitigation. United States Department of Energy, Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 420 (1982), citing, International Harvester Co. v. Occupational Safety and Health Review Commission, 628 F.2d 982, 986 (7th Cir. 1980).

When an agency decision involves substantial policy issues, an agency's need for flexibility outweighs the need for repose provided by the principle of res judicata. Clinch River Breeder Reactor Plant, supra, 16 NRC at 420, citing, Maxwell v. N.L.R.B., 414 F.2d 477, 479 (6th Cir. 1969); FTC v. Texaco, 555 F.2d 867, 881 (D.C. Cir. 1977), cert. denied, 431 U.S. 974 (1977), rehearing denied, 434 U.S. 883, 893-894 (1977).

A change in external circumstances is not required for an agency to exercise its basic right to change a policy decision and apply a new policy to parties to which an old policy applied. United States Department of Energy, Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 420 (1982), citing, Maxwell v. N.L.R.B., 414 F.2d 477, 479 (6th Cir. 1969).

An Agency must be free to consider changes that occur in the way it perceives the facts, even though the objective circumstances remain unchanged. Clinch River Breeder Reactor Plant, supra, 16 NRC at 420, citing, Maxwell, supra; FTC v. Texaco, 555 F.2d 867, 874 (D.C. Cir. 1977), cert. denied, 431 U.S. 974 (1977), rehearing denied, 434 U.S. 883, 893-894 (1977).

Principles of collateral estoppel, like those of res judicata, may be applied in administrative adjudicatory proceedings. U.S. v. Utah Construction and Mining Co., 384 U.S. 394, 421-22 (1966); Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), ALAB-378, 5 NRC 557 (1977); Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, remanded on other grounds, CLI-74-12, 7 AEC 203 (1974); Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-673, 15 NRC 688, 695 (1982); Public Service Electric and Gas Co. (Hope Creek Generating Station, Unit 1), ALAB-759, 19 NRC 13, 25 n.40 (1984), citing, Farley, supra; Commonwealth Edison Co. (Braidwood Nuclear Power Station,

Units 1 and 2), LBP-85-11, 21 NRC 609, 620 (1985). Collateral estoppel precludes relitigation of issues of law or fact which have been finally adjudicated by a tribunal of competent jurisdiction. Davis-Besse, supra; Farley, supra.

The application of collateral estoppel does not hinge on the correctness of the decision or interlocutory ruling of the first tribunal. Moore's Federal Practice, ¶¶ 0.405[1] and [4.1] at 629, 634-37 (2d ed. 1974); Davis-Besse, supra. It is enough that the tribunal had jurisdiction to render the decision, that the prior judgment was rendered on the merits, that the cause of action was the same, and that the party against whom the doctrine is asserted was a party to the earlier litigation or in privity with such a party. Davis-Besse, supra. Participants in a proceeding cannot be held bound by the record adduced in another proceeding to which they were not parties. Philadelphia Electric Co. (Peach Bottom Station, Units 2 and 3), Metropolitan Edison Co. (Three Mile Island Station, Unit 2), Public Service Electric and Gas Co. (Hope Creek Station, Units 1 and 2), ALAB-640, 13 NRC 487, 543 (1981). In virtually every case in which the doctrine of collateral estoppel was asserted to prevent litigation of a contention, it was held that privity must exist between the intervenor advancing the contention and the intervenor which litigated it in the prior proceeding. General Electric Co. (GETR Vallecitos), LBP-85-4, 21 NRC 399, 404 (1985) and cases cited. But see, Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 199-200 (1981). Conversely, that parties to the former action were not joined to the second action does not prevent application of the principle. Dreyfus v. First National Bank of Chicago, 424 F.2d 1171, 1175 (7th Cir. 1970), cert. denied, 400 U.S. 832 (1970); Hummel v. Equitable Assurance Society, 151 F.2d 994, 996 (7th Cir. 1945); Davis-Besse, supra, 5 NRC 557. Where circumstances have changed (as to context or law, burden of proof or material facts) from when the issues were formerly litigated or where public interest calls for relitigation of issues, neither collateral estoppel nor res judicata applies. Joseph M. Farley, supra, 7 AEC 203; Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), LBP-77-20, 5 NRC 680 (1977). Furthermore, under neither principle does a judicial decision become binding on an administrative agency if the legislature granted primary authority to decide the substantive issue in question to the administrative agency. 2 Davis, Administrative Law Treatise, § 18.12 at pp. 627-28. Cf. US v. Radio Corp. of America, 358 U.S. 334, 347-52 (1959). Where application of collateral estoppel would not affect the Commission's ability to control its internal proceedings, however, a prior court decision may be binding on the NRC. Davis-Besse, supra.

In appropriate circumstances, the doctrines of res judicata and collateral estoppel which are found in the judicial setting are equally present in administrative adjudication. One exception

is the existence of broad public policy considerations on special public interest factors which would outweigh the reasons underlying the doctrines. Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), LBP-79-27, 10 NRC 563, 574-575 (1979).

There is no basis under the Atomic Energy Act or NRC rules for excluding safety questions at the operating license stage on the basis of their consideration at the construction permit stage. The only exception is where the same party tries to raise the same question at both the construction permit and operating license stages; principles of res judicata and collateral estoppel then come into play. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 464 (1979); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1044 (1982), citing, Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-74-12, 7 AEC 203 (1974).

An operating license proceeding should not be utilized to rehash issues already ventilated and resolved at the construction permit stage. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1081 (1982), citing, Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-74-12, 7 AEC 203 (1974). A contention already litigated between the same parties at the construction permit stage may not be relitigated in an operating license proceeding. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-107A, 16 NRC 1791, 1808 (1982), citing, Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210 (1974); Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-3, 15 NRC 61, 78-82 (1982).

A party countering a motion for summary judgment based on res judicata need only recite the facts found in the other proceedings, and need not independently support those "facts." Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), ALAB-575, 11 NRC 14, 15 n.3 (1980).

Collateral estoppel requires presence of at least four elements in order to be given effect: (1) the issue sought to be precluded must be the same as that involved in the prior action, (2) the issue must have been actually litigated, (3) the issue must have been determined by a valid and final judgment, and (4) the determination must have been essential to the prior judgment. Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), LBP-79-27, 10 NRC 563, 566 (1979); Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-34, 18 NRC 36, 38 (1983), citing, Florida Power and Light Co. (St. Lucie Plant, Unit 2), LBP-81-58, 14 NRC 1167 (1981). In addition, the prior tribunal must have had jurisdiction to render the decision, and the party against whom the doctrine of collateral estoppel is

asserted must have been a party or in privity with a party to the earlier litigation. Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 620 (1985).

The doctrine of collateral estoppel traditionally applies only when the parties in the case were also parties (or their privies) in the previous case. A limited extension of that doctrine permits "offensive" collateral estoppel, i.e., the claim by a person not a party to previous litigation that an issue had already been fully litigated against the defendant and that the defendant should be held to the previous decision because he has already had his day in court. Parklane Hosiery Co., Inc. v. Leo M. Shore, 439 U.S. 322 (1979). At least one Licensing Board has held that, in operating license proceedings, estoppel may also be applied defensively, to preclude an intervenor who was not a party from raising issues litigated in the construction permit proceeding. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 199-201 (1981). This would not appear to be wholly consistent with the Appeal Board's ruling in Philadelphia Electric Co. (Peach Bottom Station, Units 2 and 3), Metropolitan Edison Co. (Three Mile Island Station, Unit 2), Public Service Electric and Gas Co. (Hope Creek Station, Units 1 and 2), ALAB-640, 13 NRC 487, 543 (1981).

The Licensing Board which conducted the San Onofre operating license hearing relied upon similar reasoning. The Board held that, although "identity of the parties" and "full prior adjudication of the issues" are textbook elements of the doctrines of res judicata and collateral estoppel, they are not prerequisites to foreclosure of issues at the operating stage which were or could have been litigated at the construction permit stage. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-3, 15 NRC 61, 82 (1982). When an issue was known at the construction permit stage and was the subject of intensive scrutiny, anyone who could have (even if no one had) litigated the issue at that time can not later seek to do so at the operating license hearing without a showing of changed circumstances or newly discovered evidence. San Onofre, supra, 15 NRC at 78-82. The Appeal Board subsequently found that the Licensing Board had erred. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-673, 15 NRC 688, 694-696 (1982); Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 353-354 (1983). The doctrines of res judicata, collateral estoppel and privity provide the appropriate bases for determining when concededly different persons or groups should be treated as having their day in court. There is no public policy reason why the Agency's administrative proceedings warrant a looser standard. San Onofre (ALAB-673), supra,

15 NRC at 696. The Appeal Board also disagreed with the Licensing Board's statement that organizations or persons who share a general point of view will adequately represent one another in NRC proceedings. San Onofre (ALAB-673), supra, 15 NRC at 695-696.

The standard for determining whether persons or organizations are so closely related in interest as to adequately represent one another is whether legal accountability between the two groups or virtual representation of one group by the other is shown. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-34, 18 NRC 36, 38 n.3 (1983), citing, Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 1 and 2), ALAB-673, 15 NRC 688, 695-96 (1982) (dictum).

An operating license Board will not apply collateral estoppel to an issue which was considered during an uncontested construction permit hearing. When there are no adverse parties in the construction permit hearing, there can be neither privity of parties nor "actual litigation" of the issue sufficient to support reliance on collateral estoppel. Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 622-624 (1985), citing, Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-673, 15 NRC 688, 694-696 (1982).

Where the legal standards of two statutes are significantly different, the decision of issues under one statute does not give rise to collateral estoppel in litigation of similar issues under a different statute. Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), LBP-29-27, 10 NRC 563, 571 (1979).

The Commission will give effect to factual findings of Federal courts and sister agencies when those findings are part of a final judgment, even when the party seeking estoppel effect was not a party to the initial litigation. Although the application of collateral estoppel would be denied if a party could have easily joined in the prior litigation, the Commission will apply collateral estoppel even though it is alleged that a party could have joined in, if the prior litigation was a complex antitrust case. Furthermore, FERC determinations about the applicability of antitrust laws are sufficiently similar to Commission determinations to be entitled to collateral estoppel effect. Even a shift in the burden of persuasion does not exclude the application of collateral estoppel when it is apparent that the FERC opinion did not arrive at its antitrust conclusions because of the burden of persuasion. On the other hand, the decision of a Federal district court on a summary judgment motion is not a final judgment entitled to collateral estoppel effect, particularly when the court did not fully explain the grounds for its opinion and when its decision was issued after the hearing board had already begun studying the record and had formed factual

conclusions which were not adequately addressed in the district court's opinion. Florida Power and Light Co. (St. Lucie Plant, Unit 2), LBP-81-58, 14 NRC 1167, 1173-80, 1189-90 (1981).

Summary disposition may be denied on the basis of res judicata and collateral estoppel. Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), ALAB-575, 11 NRC 14 (1980), affirming LBP-79-27, 10 NRC 563 (1979).

3.18 Termination of Proceedings

3.18.1 Procedures for Termination

Termination of adjudicatory proceedings on a construction permit application should be accomplished by a motion filed by applicant's counsel with those tribunals having present jurisdiction over the proceeding. A letter by a lay official to the Commission when the Licensing Board has jurisdiction over the matter is not enough. Toledo Edison Company (Davis-Besse Nuclear Power Station, Units 2 and 3), ALAB-622, 12 NRC 667, 668-9 (1980).

3.18.2 Post-Termination Authority of Commission

10 CFR § 2.107(a) expressly empowers Licensing Boards to impose conditions upon the withdrawal of a permit or license application after the issuance of a notice of hearing. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 2 and 3), ALAB-622, 12 NRC 667, 669 n.2 (1980).

TABLE OF CONTENTS

POST HEARING MATTERS

4.0	POST HEARING MATTERS	PH 1
4.1	<u>Settlements and Stipulations</u>	PH 1
4.2	<u>Proposed Findings</u>	PH 1
4.2.1	<u>Intervenor's Right to File Proposed Findings</u>	PH 2
4.2.2	<u>Failure to File Proposed Findings</u>	PH 2
4.3	<u>Initial Decisions</u>	PH 3
4.3.1	<u>Reconsideration of Initial Decision</u>	PH 6
4.4	<u>Reopening Hearings</u>	PH 7
4.4.1	<u>Motions to Reopen Hearing</u>	PH 8
4.4.1.1	Time for Filing Motion to Reopen Hearing	PH 10
4.4.1.2	Contents of Motion to Reopen Hearing (Reserved)	PH 11
4.4.2	Grounds for Reopening Hearing (SEE ALSO 3.13.3)	PH 11
4.4.3	Reopening Construction Permit Hearings to Address New Generic Issues	PH 16
4.4.4	Discovery to Obtain Information to Support Reopening of Hearing	PH 16
4.5	<u>Motions to Reconsider</u>	PH 17
4.6	<u>Sua Sponte Review by the Appeal Board</u>	PH 18
4.7	<u>Motions for Post-Judgment Relief</u>	PH 22

4.0 POST HEARING MATTERS

4.1 Settlements and Stipulations

10 CFR § 2.759 expressly provides, and the Commission stresses, that the fair and reasonable settlement of contested initial licensing proceedings is encouraged. Philadelphia Electric Company, (Peach Bottom Atomic Power Station, Unit 3), ALAB-532, 9 NRC 279, 283 (1979). This was reiterated in the Commission's Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 456 (1981).

4.2 Proposed Findings

Each party to a proceeding may file proposed findings of fact and conclusions of law with the Licensing Board. Despite the fact that a number of older cases have held that a Licensing Board is not required to rule specifically on each finding proposed by the parties (see Boston Edison Co. (Pilgrim Nuclear Power Station), ALAB-83, 5 AEC 354, 369 (1972), aff'd sub nom., Union of Concerned Scientists v. AEC, 499 F.2d 1069 (D.C. Cir. 1974); Wisconsin Electric Power Co. (Point Beach Nuclear Power Station, Unit 2), ALAB-78, 5 AEC 319, 321 (1972)), the Appeal Board has indicated that a Licensing Board must clearly state the basis for its decision and, in particular, state reasons for rejecting certain evidence in reaching the decision. Public Service Co. of N.H. (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33 (1977). 10 CFR 2.754 permits the Licensing Board to vary its regularly provided procedures by altering the ordinary regulatory schedule for findings of fact. The NRC Staff is permitted to consider the position of other parties before finalizing its position. Consumers Power Co. (Big Rock Point Plant), LBP-82-51A, 16 NRC 180, 181 (1982).

10 CFR § 2.754(c) requires that a party's proposed findings of fact and conclusions of law be confined to the material issues of fact and law presented on the record. Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 49 (1981). However, unless a board has previously required the filing of all arguments, a party is not precluded from presenting new arguments in its proposed findings of fact. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-81, 18 NRC 1410, 1420-1421 (1983), reconsid. denied sub nom., LBP-84-10, 19 NRC 509, 517 (1984).

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

(Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 906-907 (1982).

Where an intervenor chooses to file proposed findings, the Board is entitled to take that filing as setting forth all of the issues that were contested. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 371 (1983).

4.2.1 Intervenor's Right to File Proposed Findings

An intervenor may file proposed findings with respect to all issues whether or not raised by his own contentions. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 863 (1974).

4.2.2 Failure to File Proposed Findings

Consistent with 10 CFR 2.754(b), contentions for which findings have not been submitted may be treated as having been abandoned. Cincinnati Gas and Electric Co. (Wm. H. Zimmer Nuclear Power Station, Unit 1), LBP-82-48, 15 NRC 1549, 1568 (1982).

The Appeal Board is not required to review exceptions made by a party who has failed to file proposed findings on the issues with respect to which the exceptions are taken. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-280, 2 NRC 3, 4 at n.2 (1975); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 964 (1974).

A Licensing Board in its discretion may refuse to rule on an issue in its initial decision if the party raising the issue has not filed proposed findings of fact and conclusions of law. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981).

A party that fails to submit proposed findings as requested by a Licensing Board, relying instead on the submission of others, assumes the risk that such reliance might be misplaced; it must be prepared to live with the consequence that its further appeal rights will be waived. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 907 (1982).

The filing of proposed findings of fact is optional, unless the presiding officer directs otherwise. The presiding officer is empowered to take a party's failure to file proposed findings, when directed to do so, as a default. Detroit Edison Co. (Enrico Fermi, Atomic Power Plant, Unit 2), ALAB-709, 17 NRC 17, 21 (1983). Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit

1), LBP-84-26, 20 NRC 53, 61 n.3 (1984). See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1213 n.18 (1984), rev'd in part on other gnds., CLI-85-2, 21 NRC 282 (1985); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-84-47, 20 NRC 1405, 1414 (1984).

Even when a Licensing Board order requesting the submission of proposed findings has been disregarded, the Commission's Rules of Practice do not mandate a sanction. Fermi, supra, 17 NRC at 23, citing, Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 332-33 (1973).

The failure to file proposed findings is subject to sanctions only in those instances where a Licensing Board has directed such findings to be filed. That is the extent of the adjudicatory board's enforcement powers under 10 CFR § 2.754. Fermi, supra, 17 NRC at 23.

Absent a Board order requiring the submission of proposed findings, an intervenor that does not make such a filing is free to pursue on appeal all issues it litigated below. The setting of a schedule for filing proposed findings falls short of an explicit direction to file findings and thus does not form the basis for finding a party in default. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 371 (1983), citing, 10 CFR § 2.754; Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-709, 17 NRC 17, 21 (1983).

4.3 Initial Decisions

After the hearing has been concluded and proposed findings have been filed by the parties, the Licensing Board will issue its initial decision. This decision can conceivably constitute the ultimate agency decision on the matter addressed in the hearing provided that it is not modified by subsequent Appeal Board and/or Commission review. Under recent amendments to 10 CFR § 2.764, the Licensing Board's decision authorizing issuance of an operating license is to be considered automatically stayed until the Commission completes a *sua sponte* review to determine whether to stay the decision. Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-647, 14 NRC 27, 29 (1981). (Prior to the amendment, an initial decision authorizing issuance of a construction permit (or operating license) was effective when issued, unless stayed. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-458, 7 NRC 155, 170 (1978). Such decisions were presumptively valid and, unless or until they were stayed or overturned by appropriate authority, were entitled to full recognition. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-423, 6 NRC 115, 117 (1977)).

On November 5, 1979, the Commission amended its Rules of Practice adding to 10 CFR Part 2 an Appendix B (44 Fed. Reg. 65050; November 9, 1979), which temporarily suspended the operation of 10 CFR § 2.764 and provided that Licensing Board decisions "shall not become effective until the Appeal Board and Commission actions outlined [in the Appendix] have taken place." On May 28, 1981, 10 CFR § 2.764 was amended to incorporate the provisions of Appendix B.

In relevant part, 10 CFR § 2.764 now provides for Appeal Board review, within 60 days of any Licensing Board decision that would otherwise authorize licensing action, of any stay motions timely filed. If none are filed, the Appeal Board is to conduct a sua sponte review and decide whether a stay is warranted. In so deciding the Appeal Board is to be guided by 10 CFR § 2.788, and in addition give attention to whether issuance of the license or permit prior to full administrative review might: (1) create novel safety or environmental issues in light of the TMI accident; or (2) prejudice review of significant safety or environmental issues. Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-626, 13 NRC 17, 18 (1981). In McGuire, the Appeal Board found that an unpublished Licensing Board order authorizing fuel loading, initial criticality, and zero-power physics testing was an order authorizing "licensing action" within the ambit of (then) Appendix B (now Section 2.764). In contrast, a partial initial decision in a construction permit proceeding which addressed all matters except emergency planning and TMI-2 related issues (on which evidentiary hearings were yet to be held) was not considered a decision providing the underpinning of "licensing action." Boston Edison Co. (Pilgrim Nuclear Station, Unit 2), ALAB-632, 13 NRC 91, 92 (1981).

The Commission's "immediate effectiveness" regulation, 10 CFR § 2.764 (1982), as amended. 47 Fed. Reg. 2286 (January 15, 1982), requires in the case of construction permits, certain limited and immediate Appeal Board and Commission review -- and, in the case of operating licenses, Commission review only -- of an initial decision before it can become effective. Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), ALAB-686, 16 NRC 454, 456, CLI-82-37, 16 NRC 1691 (1982).

10 CFR § 2.764(a) was intended to apply to an initial decision authorizing issuance of a license for a manufacturing license. It is for this reason alone that a Licensing Board decision on a manufacturing license can become effective before it becomes final. 10 CFR § 2.764(e) does not apply to manufacturing licenses. Because the issuance of a manufacturing license does not conclude the construction permit process, such a license does not present health and safety issues requiring immediate review. Cf. 46 Fed. Reg. 47764, 47765 (September 30, 1981). A manufacturing license can become effective before it becomes final, and neither the Appeal Board nor the Commission need undertake an immediate effectiveness review of a Licensing

Board decision authorizing the issuance of a manufacturing license. Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), CLI-82-37, 16 NRC 1691 (1982).

The findings and initial decision of the Licensing Board must be supported by reliable, probative and substantial evidence on the record. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 2), ALAB-254, 8 AEC 1184, 1187 (1975). The initial decision must contain record citations to support the findings. Virginia Electric & Power Co. (North Anna Power Station, Units 1, 2, 3 & 4), ALAB-256, 1 NRC 10, 14 at n.18 (1975). Of course, a Licensing Board's decision cannot be based on factual material that has not been introduced and admitted into evidence. Otherwise the parties would be deprived of the opportunity to impeach the evidence through cross-examination or to rebut it with other evidence. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, & 2B), ALAB-463, 7 NRC 341, 351-52 (1978).

Licensing Boards have a general duty to insure that initial decisions contain a sufficient exposition of any ruling on a contested issue of law or fact to enable the parties and a reviewing Appeal Board to readily apprehend the foundation of the ruling. This is not a mere procedural nicety but it is a necessity if the Appeal Board is to efficiently carry out its review responsibility. Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 10-11 (1976); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-104, 6 AEC 179 at n.2 (1973).

Clarity of the basis for the initial decision is important. In circumstances where a Licensing Board bases its ruling on an important issue on considerations other than those pressed upon it by the litigants themselves, there is especially good reason why the foundation for that ruling should be articulated in reasonable detail. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-327, 3 NRC 408, 414 (1976). When resort is made to technical language which a layman could not be expected to readily understand, there is an obligation on the part of the opinion writer to make clear the precise significance of what is being said in terms of what is being decided. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 & 3), ALAB-336, 4 NRC 3 (1976).

The requirement that a Licensing Board clearly delineate the basis for its initial decision was emphasized by the Appeal Board in Public Service Co. of N.H. (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33 (1977). Therein, the Appeal Board stressed that the Licensing Board must sufficiently inform a party of the disposition of its contentions and must, at a minimum, explain why it rejected reasonable and apparently reliable evidence contrary to the Board's findings.

Thus, a prior Licensing Board ruling in Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), LBP-77-7, 5 NRC 452 (1977), to the effect that a Board need not justify its findings by discounting proffered testimony as unreliable appears to be in error insofar as it is contrary to the Appeal Board's guidance in Seabrook. Although normally the Appeal Board is disinclined to examine the record to determine whether there is support for conclusions which the Licensing Board failed to justify, it evaluated evidence in one case because (1) the Licensing Board's decision preceded the Appeal Board's decision in Seabrook which clearly established this policy, and (2) it did not take much time for the Appeal Board to conduct its own evaluation. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-463, 7 NRC 341, 368 (1978).

In certain circumstances, time may not permit a Licensing Board to prepare and issue its detailed opinion. In this situation, one approach is for the Licensing Board to reach its conclusion and make a ruling based on the evidentiary record and to issue a subsequent detailed decision as time permits. The Appeal Board tacitly approved this approach in Public Service Electric & Gas Co. (Hope Creek Generating Station, Units 1 & 2), ALAB-460, 7 NRC 204 (1978). This approach has been followed by the Commission in the GESMO proceeding. See Mixed Oxide Fuel, CLI-78-10, 7 NRC 711 (1978).

It is the right and duty of a Licensing Board to include in its decision all determinations of matters on an appraisal of the record before it. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18, 30 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

Partial initial decisions on certain contentions favorable to an applicant can authorize issuance of certain permits and licenses, such as a low-power testing license (or, in a construction permit proceeding, a limited work authorization), notwithstanding the pendency of other contentions. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1137 (1983).

4.3.1 Reconsideration of Initial Decision

A Licensing Board has inherent power to entertain and grant a motion to reconsider an initial decision. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-235, 8 AEC 645, 646 (1974). (See also 4.5)

An authorized, timely-filed petition for reconsideration before the trial tribunal may work to toll the time period under 10 CFR § 2.762(a) for filing an appeal. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-659, 14 NRC 983, 985 (1981).

A motion for reconsideration should not include new arguments or evidence unless a party demonstrates that its new material relates to a Board concern that could not reasonably have been anticipated. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-84-10, 19 NRC 509, 517-18 (1984).

4.4 Reopening Hearings

Hearings may be reopened, in appropriate situations, either upon motion of any party or sua sponte. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 356 (1973). Sua sponte reopening is required when a Board becomes aware, from any source, of a significant unresolved safety issue, Vermont Yankee, supra, or of possible major changes in facts material to the resolution of major environmental issues. Commonwealth Edison Co. (LaSalle County Nuclear Station, Units 1 & 2), ALAB-153, 6 AEC 821 (1973). Where factual disclosures to the Appeal Board reveal a need for further development of an evidentiary record, it may order that the record be reopened for the taking of supplementary evidence. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-463, 7 NRC 341, 352 (1978). For reopening the record, the new evidence to be presented need not always be so significant that it would alter the Board's findings or conclusions when the taking of new evidence can be accomplished with little or no burden upon the parties. To exclude otherwise competent evidence because the Board's conclusions may be unchanged would not always satisfy the requirement that a record suitable for review be preserved (10 CFR § 2.756). Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), LBP-78-2, 7 NRC 83, 85 (1978). An Appeal Board might be sympathetic to a motion to reopen a hearing if documents appended to an appellate brief constituted newly discovered evidence and tended to show that significant testimony in the record was false. Toledo Edison Co. and Cleveland Illuminating Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3); (Perry Nuclear Power Plant, Units 1 and 2), ALAB-430, 6 NRC 457 (1977).

New regulatory requirements may establish good cause for reopening a record or admitting new contentions on matters related to the new requirement. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-81-5, 13 NRC 226, 233 (1981).

Where a record is reopened for further development of the evidence, all parties are entitled to an opportunity to test the new evidence and participate fully in the resolution of the issues involved. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2) ALAB-355, 3 NRC 830 (1976). Permissible inquiry through cross-examination at a reopened hearing necessarily extends to every matter within the reach of the testimony

submitted by the applicants and accepted by the Board. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 94 (1977).

A Licensing Board lacks the power to reopen a proceeding once final agency action has been taken, and it may not effectively "reopen" a proceeding by independently initiating a new adjudicatory proceeding. Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), ALAB-381, 5 NRC 582 (1977).

An Appeal Board, unlike other appellate tribunals, has the option of reopening the record and receiving new evidence itself, if necessary, obviating remand to a Licensing Board. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-699, 16 NRC 1324, 1327 (1982). See e.g., Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 878-879 (1980).

The Appeal Board dismissed for want of jurisdiction a motion to reopen hearings in a proceeding in which the Appeal Board had issued a final decision, followed by the Commission's election not to review that decision. The Commission's decision represented the agency's final action, thus ending the Appeal Board's authority over the case. The Appeal Board referred the matter to the Director of Nuclear Reactor Regulation because, under the circumstances, he had the discretionary authority to grant the relief sought subject to Commission review. Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-530, 9 NRC 261, 262 (1979). See Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 NRC 1321, 1329-1330 (1983).

The fact that certain issues remain to be litigated does not absolve an intervenor from having to meet the standards for reopening the completed hearing on all other radiological health and safety issues in order to raise a new non-emergency planning contention. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1138 (1983).

4.4.1 Motions to Reopen Hearing

A motion to reopen the hearing can be filed by any party to the proceeding. The motion need not be supported by an affidavit and the movant is free to rely on, for example, Staff-applicant correspondence to establish the existence of a newly discovered issue. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358 (1973).

As is well settled, the proponent of a motion to reopen the record has a heavy burden to bear. Kansas Gas & Electric Company (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978); Duke Power Co. (Catawba

Nuclear Station, Units 1 & 2), ALAB-359, 4 NRC 619, 620 (1976); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-738, 18 NRC 177, 180 (1983), citing, Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-84-3, 19 NRC 282, 283 (1984).

Where a motion to reopen relates to a previously uncontested issue, the moving party must satisfy both the standards for admitting late-filed contentions, 10 CFR § 2.714(a), and the criteria established by case law for reopening the record. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-82-39, 16 NRC 1712, 1714-15 (1982); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 NRC 1321, 1325 n.3 (1983).

The new material in support of a motion to reopen must be set forth with a degree of particularity in excess of the basis and specificity requirements contained in 10 CFR 2.714(b) for admissible contentions. Pacific Gas Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-775, 19 NRC 1361, 1366 (1984). The supporting information must be more than mere allegations, it must be tantamount to evidence which would materially affect the previous decision. Id. To satisfy this requirement, it must possess the attributes set forth in 10 CFR 2.743(c) which defines admissible evidence as "relevant, material, and reliable." Id. at 1366-67. Embodied in this requirement is the idea that evidence presented in affidavit form must be given by competent individuals with knowledge of the facts or by experts in the disciplines appropriate to the issues raised. Id. at 1367 n.18.

Even though a matter is timely raised and involves significant safety considerations, no reopening of the evidentiary hearing will be required if the affidavits submitted in response to the motion demonstrate that there is no genuine unresolved issue of fact, i.e., if the undisputed facts establish that the apparently significant safety issue does not exist, has been resolved, or for some other reason will have no effect upon the outcome of the licensing proceeding. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-83-41, 18 NRC 104, 109 (1983).

Where a motion to reopen is related to a litigated issue, the effect of the new evidence on the outcome of that issue can be examined before or after a decision. To the extent a motion to reopen is not related to a litigated

issue, then the outcome to be judged is not that of a particular issue, but that of the action which may be permitted by the outcome of the licensing proceedings. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1142 (1983), citing, Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973).

4.4.1.1 Time for Filing Motion to Reopen Hearing

A motion to reopen may be filed and the Licensing Board may entertain it at any time prior to issuance of the full initial decision. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), ALAB-86, 5 AEC 376 (1972). Where a motion to reopen was mailed before the Licensing Board rendered the final decision but was received by the Board after the decision, the Board denied the motion on grounds that it lacked jurisdiction to take any action. The Appeal Board implied that this may be incorrect (referring to 10 CFR § 2.712(d)(3) concerning service by mail), but did not reach the jurisdictional question since the motion was properly denied on the merits. Northern States Power Company (Tyrone Energy Park, Unit 1), ALAB-464, 7 NRC 372, 374 at n.4 (1978).

Point Beach, supra, does not establish an ironclad rule with respect to timing of the motion. In deciding whether to reopen, the Licensing Board will consider both the timing of the motion and the safety significance of the matter which has been raised. The motion will be denied if it is untimely and the matter raised is insignificant. The motion may be denied, even if timely, if the matter raised is not grave or significant. If the matter is of great significance to public or plant safety, the motion could be granted even if it was not made in a timely manner. As such, the controlling consideration is the seriousness of the issue raised. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973); Vermont Yankee, ALAB-126, 6 AEC 393 (1973); Vermont Yankee, ALAB-124, 6 AEC 365 (1973). When timeliness is a factor, it is to be judged from the date of discovery of the new issue.

For a reopening motion to be timely presented, the movant must show that the issue sought to be raised could not have been raised earlier. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-775, 19 NRC 1361, 1366 (1984), citing, Vermont Yankee, supra, 6 AEC at 523. See Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1764-65 (1982).

A party's opportunity to gain access to information is a significant factor in a Board's determination of whether a motion based on such information is timely filed. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-85-19, 21 NRC 1707, 1723 (1985), citing, Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-52, 18 NRC 256, 258 (1983). See also Diablo Canyon, *supra*, 19 NRC at 1369.

A matter may be of such gravity that a motion to reopen may be granted notwithstanding that it might have been presented earlier. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-738, 18 NRC 177, 188 n.17 (1983), citing, Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-85-19, 21 NRC 1707, 1723 (1985).

The Vermont Yankee tests for reopening the evidentiary record are only partially applicable where reopening the record is the Board's *sua sponte* action. The Board has broader responsibilities than do adversary parties, and the timeliness test of Vermont Yankee does not apply to the Board with the same force as it does to parties. Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Units 1-4), LBP-78-2, 7 NRC 83, 85 (1978).

Where jurisdiction terminated on all but a few issues, a Board may not entertain new issues unrelated to those over which it retains jurisdiction, even where there are supervening developments. The Board has no jurisdiction to consider such matters. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-579, 11 NRC 223, 225-226 (1980). Once an appeal has been filed, jurisdiction over the appealed issues passes to the appellate tribunal and motions to reopen on the appealed issues are properly entertained by the appellate tribunal. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-699, 16 NRC 1324, 1326-27 (1982).

4.4.1.2 Contents of Motion to Reopen Hearing (RESERVED)

4.4.2 Grounds for Reopening Hearing

A decision as to whether to reopen a hearing will be made on the basis of the motion and the filings in opposition thereto, all of which amount to a "mini record." Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 523 (1973), *reconsid. den.*, ALAB-141, 6 AEC 576. The hearing must be reopened whenever a "significant", unresolved safety question is

involved. Vermont Yankee, ALAB-138, supra; Vermont Yankee, ALAB-124, 6 AEC 358, 365 at n.10 (1973). The same "significance test" applies when an environmental issue is involved. Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 & 2), ALAB-291, 2 NRC 404 (1975); Commonwealth Edison Co. (LaSalle County Nuclear Station, Units 1 & 2), ALAB-153, 6 AEC 821 (1973). (See also 3.13.3).

Matters to be considered in determining whether to reopen an evidentiary record at the request of a party, as set forth in Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520 (1973), are whether the matters sought to be addressed on the reopened record could have been raised earlier, whether such matters require further evidence for their resolution, and what the seriousness or gravity of such matters is. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), LBP-78-2, 7 NRC 83 (1978). As a general proposition, a hearing should not be reopened merely because some detail involving plant construction or operation has been changed. Rather, to reopen the record at the request of a party, it must usually be established that a different result would have been reached initially had the material to be introduced on reopening been considered. Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974); Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 465 (1982); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-775, 19 NRC 1361, 1365-66 (1984). In fact, an Appeal Board has stated that, after a decision has been rendered, a dissatisfied litigant who seeks to persuade an adjudicatory tribunal to reopen the record "because some new circumstance has arisen, some new trend has been observed or some new fact discovered" has a difficult burden to bear. Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), ALAB-359, 4 NRC 619, 620 (1976). At the same time, new regulatory requirements may establish good cause for reopening a record or admitting new contentions on matters related to the new requirement. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-81-5, 13 NRC 226, 233 (1981).

Unlike applicable standards with respect to allowing a new, timely filed contention, the Licensing Board can give some consideration to the substance of the information sought to be added to the record on a motion to reopen. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-84-20, 19 NRC 1285, 1299 n.15 (1984), citing, Vermont Yankee, ALAB-138, supra, 6 AEC at 523-24.

Where a motion to reopen an evidentiary hearing is filed after the initial decision, the standard is that the motion must establish that a different result would have been reached had the respective information been considered initially. Where the record has been closed but a motion was filed before the initial decision, the standard is whether the outcome of the proceeding might be affected. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-83-41, 18 NRC 104, 108 (1983).

In certain instances the record may be reopened, even though the new evidence to be received might not be so significant as to alter the original findings or conclusions, where the new evidence can be received with little or no burden upon the parties. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), LBP-78-2, 7 NRC 83, 85 (1978). Reopening has also been ordered where the changed circumstances involved a hotly contested issue. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), CLI-74-39, 8 AEC 631 (1974). Moreover, considerations of fairness and of affording a party a proper opportunity to ventilate the issues sometimes dictate that a hearing be reopened. For example, where a Licensing Board maintained its hearing schedule despite an intervenor's assertion that he was unable to attend the hearing and prepare for cross-examination, the Appeal Board held that the hearing must be reopened to allow the intervenor to conduct cross-examination of certain witnesses. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-249, 8 AEC 980 (1974).

The proponent of a motion to reopen the record bears a heavy burden. Normally, the motion must be timely and addressed to a significant issue. If an initial decision has been rendered on the issue, it must appear that reopening the record may materially alter the result. Where a motion to reopen the record is untimely without good cause, the movant must demonstrate not only that the issue is significant, but also that the public interest demands that the issue be further explored. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 2), ALAB-486, 8 NRC 9, 21 (1978); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1765 n.4 (1982), citing, Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973). See Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361, 364-365 (1981); Kansas Gas and Electric Co. and Kansas City Power and Light Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 NRC

1321, 1324 (1983); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1344 (1983); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-786, 20 NRC 1087, 1089-90 (1984).

The criteria for reopening the record govern each issue for which reopening is sought; the fortuitous circumstance that a proceeding has been or will be reopened on other issues is not significant. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 2), ALAB-486, 8 NRC 9, 22 (1978); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-85-19, 21 NRC 1707, 1720 (1985).

In order to reopen a licensing proceeding, an intervenor must show a change in material fact which warrants litigation anew. Carolina Power & Light Co. (Snead Nuclear Power Plant, Units 1, 2, 3 and 4), CL-79-10, 10 NRC 675, 677 (1979).

Whether to reopen a record in order to consider new evidence turns on the appraisal of several factors: (1) Is the motion timely? (2) Does it address significant safety or environmental issues? (3) Might a different result have been reached had the newly proffered material been considered initially? Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-699, 16 NRC 1324, 1327 (1982); Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-82-117B, 16 NRC 2024, 2031-32 (1982); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-730, 17 NRC 1057, 1065 n.7 (1983); Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-83-41, 18 NRC 104, 108 (1983); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-738, 18 NRC 177, 180 (1983), citing, Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 NRC 1321, 1324 (1983); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-786, 20 NRC 1087, 1089 (1984); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-803, 21 NRC 575, 578 n.2 (1985); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-807, 21 NRC 1195, 1199 n.5 (1985).

A party seeking to reopen must show that the issue it now seeks to raise could not have been raised earlier. Fermi, supra, 17 NRC at 1065.

A motion to reopen an administrative record may rest on evidence that came into existence after the hearing closed. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 n.6 (1980).

To justify the granting of a motion to reopen, the moving papers must be strong enough, in light of any opposing filings, to avoid summary disposition. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), LBP-82-84, 16 NRC 1183, 1186 (1982), citing, Vermont Yankee Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973).

Evidence of a continuing effort to improve reactor safety does not necessarily warrant reopening a record. Diablo Canyon, supra, 11 NRC at 887.

Repetition of arguments previously presented does not present a basis for reconsideration. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 5 (1980). Nor do generalized assertions to the effect that "more evidence is needed." Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 63 (1981). Newspaper allegations of quality assurance deficiencies, unaccompanied by evidence, ordinarily are not sufficient grounds for reopening an evidentiary record. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-84-3, 19 NRC 282, 286 (1984).

A movant should provide any available material to support a motion to reopen the record rather than rely on "bare allegations or simple submission of new contentions." Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 NRC 1321, 1324 (1983), citing, Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361, 363 (1981); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-803, 21 NRC 575, 577 (1985). Undocumented newspaper articles on subjects with no apparent connection to the facility in question do not provide a legitimate basis on which to reopen a record. Waterford, supra, 18 NRC at 1330; Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-786, 20 NRC 1087, 1089-1090 (1984). The proponent of a motion to reopen a hearing bears the responsibility for establishing that the standards for reopening are met. The movant is not entitled to engage in discovery in order to support a motion to reopen. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-7, 21 NRC 1104, 1106 (1985).

A motion to reopen the record based on alleged deficiencies in an applicant's construction quality assurance program must establish either that uncorrected construction errors endanger safe plant operation, or that there has been a breakdown of the quality assurance program sufficient to raise legitimate doubt as to whether the plant can be operated safely. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1344-1345 (1983), citing, Union Electric Co. (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 346 (1983). This standard also applies to an applicant's design quality assurance program. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-775, 19 NRC 1361, 1366 (1984).

Long range forecasts of future electric power demands are especially uncertain as they are affected by trends in usage, increasing rates, demographic changes, industrial growth or decline, and the general state of economy. These factors exist even beyond the uncertainty that inheres to demand forecasts: assumptions on continued use from historical data, range of years considered, the area considered, and extrapolations from usage in residential, commercial, and industrial sectors. The general rule applicable to cases involving differences or changes in demand forecasts is stated in Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 352-69 (1975). Accordingly, a possible one-year slip in construction schedule was clearly within the margin of uncertainty, and intervenors had failed to present information of the type or substance likely to have an effect on the need-for-power issue such as to warrant relitigation. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), CLI-79-5, 9 NRC 607, 609-10 (1979).

4.4.3 Reopening Construction Permit Hearings to Address New Generic Issues

Construction permit hearings should not be reopened upon discovery of a generic safety concern where such generic concern can be properly addressed and considered at the operating license stage. Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 & 2), ALAB-291, 2 NRC 404 (1975).

4.4.4 Discovery to Obtain Information to Support Reopening of Hearing

The Appeal Board has held that though the period for discovery may have long since terminated, a party may obtain discovery in order to support a motion to reopen

a hearing provided that party demonstrates with particularity that discovery would enable it to produce the needed materials. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 524 (1973). This Appeal Board ruling is substantially undercut by a recent Commission decision in which the Commission noted that the burden is on the movant to establish prior to reopening that the standards for reopening are met and "the movant is not entitled to engage in discovery in order to support a motion to reopen." Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-7, 21 NRC 1104, 1106 (1985).

4.5 Motions to Reconsider

When a Board has reached a determination of a motion in the course of an on-the-record hearing, it need not reconsider that determination in response to an untimely motion but it may, in its discretion, decide to reconsider on a showing that it has made an egregious error. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-6, 15 NRC 281, 283 (1982).

In certain instances, for example, where a party attempts to appeal an interlocutory ruling, a Licensing Board can properly treat the appeal as a motion to the Licensing Board itself to reconsider its ruling. Public Service Co. of Oklahoma (Black Fox Station, Units 1 & 2), ALAB-370, 5 NRC 131 (1977); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1653 (1982).

The Appeal Board has indicated that a motion to it to reconsider a prior decision will be denied where the Appeal Board is left with the conviction that what confronts it is not in reality an elaboration upon or refinement of, arguments previously advanced, but instead is an entirely new thesis. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-418, 6 NRC 1, 2 (1977).

A party may not raise, in a petition for reconsideration, a matter which was not contested before the Licensing Board or on appeal. Tennessee Valley Authority (Hartsville Plant, Units 1A, 2A, 1B, 2B), ALAB-467, 7 NRC 459, 462 (1978). In the same vein, a matter which was raised at the inception of a proceeding but was never pursued before the Licensing Board or the Appeal Board cannot be raised on a motion for reconsideration of the Appeal Board's decision. Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-477, 7 NRC 766, 768 (1978).

Motions to reconsider an order should be associated with requests for reevaluation in light of elaboration on or refinement of arguments previously advanced; they are not the occasion for advancing an entirely new thesis. Central Electric Power Cooperative, Inc. (Virgil C. Summer Nuclear Station, Unit No. 1), CLI-81-26, 14 NRC 787, 790 (1981).

Where a party petitioning the Court of Appeals for review of a decision of the agency also petitions the agency to reconsider its decision and the Federal court stays its review pending the agency's disposition of the motion to reconsider, the Hobbs Act does not preclude the agency's reconsideration of the case. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 259 (1978).

Repetition of arguments previously presented does not present a basis for reconsideration. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 5-6 (1980).

4.6 Sua Sponte Review by the Appeal Board

Sua sponte review of a Licensing Board's decision by an Appeal Board is a long-standing Commission-approved practice that is undertaken in all cases, regardless of their nature or whether exceptions have been filed. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1262 (1982), citing, Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), ALAB-689, 16 NRC 887, 890 (1982).

The Appeal Board has the power to conduct a de novo review of the record sua sponte to make its own independent findings. Wisconsin Electric Power Co. (Point Beach Nuclear Power Station), ALAB-73, 5 AEC 297, 298 (1972). In uncontested and/or unappealed cases, the Appeal Board will always conduct a sua sponte review of safety and environmental issues. See, e.g., Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799, 803 (1981), citing, Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-571, 10 NRC 687 (1979). See also Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Station), ALAB-79, 5 AEC 342 (1972); Detroit Edison Co. (Enrico Fermi Atomic Power Plant), ALAB-77, 5 AEC 315 (1972); Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), ALAB-689, 16 NRC 887, 890 (1982); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 908 (1982); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1111 (1983); Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-793, 20 NRC 1591, 1624 (1984).

In the absence of an appeal, the customary practice of an Appeal Board is to conduct a sua sponte review of an authorization of licensing action. However, an Appeal Board will not conduct a

sua sponte review of a proceeding that was dismissed when the parties settled the issues. Thus, an Appeal Board will decline to conduct a sua sponte review of a license amendment proceeding where the parties agreed to proposed findings of fact and conclusions of law, and where the Licensing Board raised no significant safety or environmental issues on its own motion. Portland General Electric Co. (Trojan Nuclear Plant), ALAB-796, 21 NRC 4, 5 (1985).

An Appeal Board may undertake sua sponte review either during the course of Licensing Board proceedings or after an initial decision has been issued. 10 CFR § 2.785; Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-374, 5 NRC 417 (1977).

An Appeal Board may undertake sua sponte review of a Licensing Board decision concerned with the integrity of the hearing process. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 908 (1982).

It is not the Appeal Board's function in a sua sponte review of a Licensing Board decision to undertake a detailed scrutiny of the entire record. Rather, the Appeal Board usually addresses only those portions of the Licensing Board's opinion that it believes deserve clarification or correction. Further, absence of Appeal Board comment on a particular Licensing Board statement should not be construed as either agreement or disagreement with it. Midland, supra, 16 NRC at 908-909.

Upon review sua sponte of a Licensing Board's initial decision authorizing facility operation, the Appeal Board will consider operational problems coming to light as a result of facility operation during the period of review only where the problems are extraordinary and have a bearing on whether an operating license should have been issued. Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-408, 5 NRC 1383, 1386 (1977).

In any event, the following matters will not be reviewed sua sponte absent extraordinary circumstances:

- (1) Procedural irregularities. Boston Edison Co. (Pilgrim Nuclear Power Station, Unit 1), ALAB-231, 8 AEC 633, 634 (1974); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1262 (1982).
- (2) Rulings on contentions. Washington Public Power Supply System (Nuclear Projects No. 1 & No. 4), ALAB-265, 1 NRC 374, 375 at n.1 (1975); Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-242, 8 AEC 847, 848-849 (1974);

- (3) Purely economic issues posed in an antitrust proceeding. Louisiana Power & Light Co. (Waterford, Electric Station, Unit 3), ALAB-258, 1 NRC 45, 48 at n.6 (1975); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 908 (1982), citing, Waterford, supra, at 1 NRC at 48 n.6; Washington Public Power Supply System, supra, at 1 NRC 375 n.1; Pilgrim, supra, at 8 AEC 633-634.
- (4) A proceeding which has been dismissed upon settlement of the issues by the parties. Trojan, supra, ALAB-796, 21 NRC 4, 5 (1985).

Appeal Board review will be routinely undertaken of any final disposition of a licensing proceeding founded upon substantive determinations of significant safety or environmental issues. Northern States Power Company (Monticello Nuclear Generating Plant, Unit 1), ALAB-611, 12 NRC 301, 303-304 (1980).

The Appeal Board, on sua sponte review, has the authority to reject or modify the findings of the Licensing Board. Monticello, supra, 12 NRC at 304. As for the standards for an Appeal Board's reversal of a Licensing Board's findings of fact, see Section 5.7.3.

A case, when properly before the Appeal Board on sua sponte review, is not confined to those issues on which the Licensing Board made substantive findings. Issues not raised by parties may be considered. However, in operating license proceedings such issues may be considered only when serious safety, environmental or common defense and security matter exist. Monticello, supra, 12 NRC at 309.

In the course of its review of an initial decision in a construction permit proceeding, an Appeal Board is free to raise sua sponte issues which were neither presented to nor considered by the Licensing Board. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-551, 9 NRC 704, 707 (1979).

If the Appeal Board determines sua sponte more information is needed, it may take evidence to develop the record. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-578, 11 NRC 189 (1980).

The Appeal Board, in lieu of remand, may undertake the conduct of hearings in the interests of expedition. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-580, 11 NRC 227, 231 (1980).

In a special proceeding not specifically addressed by Commission regulations, the Appeal Board has the authority to review the entire record of a proceeding sua sponte, independently of the parties' position. The absence of an appeal does not deprive

the Appeal Board of the right to review an issue that was contested before a Licensing Board. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-685, 16 NRC 449, 451, 452 (1982), citing, Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245, 247 (1978); Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 49 n.6 (1981).

The Appeal Board's authority to review the entire record must be distinguished from its power in operating license application proceedings to consider serious safety, environmental, and common defense and security matters not otherwise placed in issue by the parties and those cases not involving operating license applications where Commission approval is sought before pursuing new safety questions not previously put in controversy or otherwise raised in an adjudicatory context. Three Mile Island, Supra, at 16 NRC 452 n.5.

An immediate effectiveness review is not a substitute for the usual sua sponte review. Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), ALAB-689, 16 NRC 887, 890 (1982).

In no instance has the Appeal Board's conduct of a sua sponte review served (or been construed) to revoke, suspend, or defer issuance of a license. Only the finality of the Licensing Board's underlying decision is deferred pending Appeal Board review; the effectiveness of the decision is not stayed. Manufacturing License, supra, 16 NRC at 891.

If the Appeal Board's sua sponte review uncovers problems in a Licensing Board's decision or a record that may require corrective action adverse to a party's interest, the consistent practice is to give the party ample opportunity to address the matter as appropriate. Manufacturing License, supra, 16 NRC at 891 n.8, citing, Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799, 803 (1981); Northern States Power Co. (Monticello Nuclear Generating Plant, Unit 1), ALAB-611, 12 NRC 301, 309-313 (1980).

NRC regulations give an adjudicatory board the discretion to raise on its own motion any serious safety or environmental matter. See 10 CFR § 2.785(b)(2). This discretionary authority necessarily places on the board the burden of scrutinizing the record of an operating license proceeding to satisfy itself that no such matters exist. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807 (1983), review denied, CLI-83-32, 18 NRC 1309 (1983). See Northern States Power Co. (Monticello Nuclear Generating Plant, Unit 1), ALAB-611, 12 NRC 301, 309 (1980).

4.7 Motions for Post-Judgment Relief

Post-judgment motions for relief are not favored by the regulations governing Commission review of Appeal Board decisions (10 CFR § 2.786(b)(7)) and will not normally be granted absent a showing of "extraordinary circumstances." Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), CLI-78-15, 8 NRC 1, 2 (1978).

TABLE OF CONTENTS

APPEALS

5.0	APPEALS	App 1
5.1	<u>Right to Appeal</u>	App 1
5.2	<u>Who Can Appeal</u>	App 2
5.3	<u>How to Appeal</u>	App 3
5.4	<u>Time for Filing Appeals</u>	App 4
5.5	Matters Considered on Appeal	App 7
5.5.1	Issues Raised for the First Time on Appeal	App 8
5.5.2	Effect on Appeal of Failure to File Proposed Findings	App 9
5.5.3	Matters Considered on Appeal of Ruling Allowing Late Intervention	App 9
5.5.4	Consolidation of Appeals on Generic Issues	App 10
5.6	<u>Appeal Board Action</u>	App 10
5.6.1	Role of Appeal Board	App 10
5.6.2	Parties' Opportunity to be Heard on Appeal	App 15
5.6.3	Standards for Reversing Licensing Board on Findings of Fact	App 16
5.6.4	Grounds for Immediate Suspension of Construction Permit by Appeal Board	App 18
5.6.5	Immediate Effectiveness of Appeal Board Decision	App 19
5.6.6	Effect of Appeal Board Affirmance as Precedent	App 19
5.6.6.1	Precedential Effect of Unpublished Opinions of Appeal Boards	App 20
5.6.7	Disqualification of Appeal Board Member	App 20
5.7	<u>Stays Pending Appeal</u>	App 20
5.7.1	Requirements for a Stay Pending Appeal	App 22
5.7.2	Stays Pending Remand After Judicial Review	App 28
5.8	<u>Specific Appealable Matters</u>	App 28
5.8.1	Rulings on Intervention	App 28
5.8.2	Scheduling Orders	App 30
5.8.3	Discovery Rulings	App 31
5.8.3.1	Rulings on Discovery Against Nonparties	App 31
5.8.3.2	Rulings Curtailing Discovery	App 31
5.8.4	Refusal to Compel Joinder of Parties	App 32
5.8.4.1	Order Consolidating Parties	App 32
5.8.5	Order Denying Summary Disposition (SEE ALSO 3.5)	App 32
5.8.6	Procedural Irregularities	App 32
5.8.7	Matters of Recurring Importance	App 33

TABLE OF CONTENTS

APPEALS

5.8.8	Advisory Decisions on Trial Rulings	App 33
5.8.9	Order on Pre-LWA Activities	App 33
5.8.10	Partial Initial Decisions	App 33
5.8.11	Other Licensing Actions	App 34
5.8.12	Rulings on Civil Penalties	App 34
5.8.13	Evidentiary Rulings	App 34
5.8.14	Director's Decision on Show Cause Petition	App 35
5.8.15	Findings of Fact	App 35
5.9	<u>Perfecting Appeals</u>	App 35
5.9.1	General Requirements for Appeals from Initial Decision	App 35
5.10	<u>Briefs on Appeal</u>	App 36
5.10.1	Necessity of Brief	App 36
5.10.2	Time for Submittal of Brief	App 36
5.10.2.1	Time Extensions for Brief	App 37
5.10.2.2	Supplementary Briefs	App 38
5.10.3	Contents of Brief	App 38
5.10.3.1	Opposing Briefs	App 41
5.10.4	<u>Amicus Curiae Briefs</u>	App 42
5.11	<u>Oral Argument</u>	App 42
5.11.1	Failure to Appear for Oral Argument	App 42
5.11.2	Grounds for Postponement of Oral Argument	App 42
5.11.3	Oral Argument by Nonparties	App 43
5.12	<u>Actions Similar to Appeals</u>	App 43
5.12.1	Motions to Reconsider	App 43
5.12.2	Interlocutory Reviews	App 44
5.12.2.1	Directed Certification of Questions for Interlocutory Review	App 47
5.12.2.1.1	Effect of Subsequent Developments on Motion to Certify	App 53
5.12.2.1.2	Effect of Directed Certification on Uncertified Issues	App 53
5.12.3	Application to Commission for a Stay After Appeal Board's Denial of Stay	App 53
5.13	<u>Appeals from Orders, Rulings, Initial Decisions, Partial Initial Decisions</u>	App 54
5.13.1	Time for Filing Appeals	App 54
5.13.1.1	Appeals from Initial and Partial Initial Decisions	App 54
5.13.1.2	Variation in Time Limits on Appeals	App 54
5.13.2	Briefs on Appeal	App 55
5.13.3	Effect of Failure to File Proposed Findings	App 55
5.13.4	Motions to Strike Appeals	App 55
5.14	<u>Certification to the Commission</u>	App 56
5.15	<u>Review of Appeal Board Decisions</u>	App 57
5.15.1	Effect of Commission's Refusal to Entertain Appeal	App 58

TABLE OF CONTENTS

APPEALS

5.15.2	Stays Pending Judicial Review of Appeal Board Decision	App 58
5.15.3	Stays Pending Remand After Judicial Review	App 59
5.16	<u>Review of Commission Decisions</u>	App 59
5.16.1	Review of Disqualification of a Commissioner	App 59
5.17	<u>Reconsideration by the Commission</u>	App 60
5.18	<u>Jurisdiction of NRC to Consider Matters While Judicial Review is Pending</u>	App 60
5.19	<u>Procedure On Remand</u>	App 61
5.19.1	Jurisdiction of the Licensing Board on Remand	App 61
5.19.2	Jurisdiction of the Appeal Board on Remand	App 62
5.19.3	Stays Pending Remand	App 63
5.19.4	Participation of Parties in Remand Proceedings	App 63

5.0 APPEALS

5.1 Right to Appeal

An appeal from a ruling or a decision is normally allowed if the appellant can establish that, in the final analysis, some discernible injury to it has been sustained as a consequence of the ruling. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-252, 8 AEC 1175, aff'd, CLI-75-1, 1 NRC 1 (1975).

There is no right to an administrative appeal on every factual finding. Tennessee Valley Authority (Hartsville Nuclear Plants, Units 1A, 2A, 1B & 2B), ALAB-467, 7 NRC 459, 461 at n.5 (1978).

In normal circumstances, an appeal will lie only from unfavorable action taken by the Licensing Board, not from wording of a decision with which a party disagrees but which has no operative effect. Duke Power Company (Cherokee Nuclear Station, Units 1, 2 & 3), ALAB-482, 7 NRC 979, 980 (1978). For a more recent case in which the Appeal Board held that a party may not file exceptions to a decision if it is not aggrieved by the result, see Rochester Gas & Electric Corp. (Sterling Power Project, Nuclear Unit No. 1), ALAB-502, 8 NRC 383, 393 (1978).

The right to appeal accrues only to a party who is aggrieved by the result reached below. Rochester Gas & Electric Corporation (Sterling Power Project, Nuclear Unit No. 1), ALAB-502, 8 NRC 383, 393 at n.21 (1978); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903, 914 (1981); Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-790, 20 NRC 1450, 1453 (1984).

The fact that a Board made an erroneous ruling is not sufficient to warrant appellate relief. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-788, 20 NRC 1102, 1151 (1984), citing, Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 756 (1977). A party seeking appellate relief must demonstrate actual prejudice - that the Board's ruling had a substantial effect on the outcome of the proceeding. Shoreham, supra, 20 NRC at 1151, citing, Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1096 (1983).

A prevailing party may defend a result on any ground presented in the record, including one rejected below, once the other side appeals. Public Service Co. of Oklahoma (Black Fox Station, Units 1 & 2), ALAB-573, 10 NRC 775, 789 (1979); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 908 n.8 (1982), citing, Black Fox, supra, 10 NRC at 789.

5.2 Who Can Appeal

The right to appeal is confined to participants (i.e., parties) in the proceeding before the Licensing Board. Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-433, 6 NRC 469 (1977); Consolidated Edison Co. of N.Y. (Indian Point Station, Unit 2), ALAB-369, 5 NRC 129 (1977); Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-311, 3 NRC 85, 88 (1976); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-294, 2 NRC 663, 664 (1975); Public Service Electric & Gas Co. (Hope Creek Generating Station, Units 1 & 2), ALAB-251, 8 AEC 993, 994 (1974); Tennessee Valley Authority (Bellefonte Nuclear Plant, Units 1 & 2), ALAB-237, 8 AEC 654 (1974). Thus, with the single exception of a State which is participating under the "interested State" provisions of 10 CFR § 2.715(c), a nonparty to a proceeding may not appeal from a Licensing Board's decision. Metropolitan Edison Co. (Three Mile Island Nuclear Generating Station, Unit 2), ALAB-454, 7 NRC 39 (1978).

Although an interested State is not a party to a proceeding in the traditional sense, the "participational opportunity" afforded to an interested State under 10 CFR § 2.715(c) includes the ability for an interested State to appeal from an initial decision. USERDA (Clinch River Breeder Reactor), ALAB-354, 4 NRC 383, 392 (1976); Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-317, 3 NRC 175, 177-180 (1976).

In this vein, a person who makes a limited appearance before a Licensing Board is not a party and, therefore, may not appeal from the Board's decision. Metropolitan Edison Co. (Three Mile Island Nuclear Generating Station, Unit 2), ALAB-454, 7 NRC 39 (1978).

As to appeals by specific parties, the following should be noted:

- (1) A party satisfied with the result reached on an issue is normally precluded from appealing with respect to that issue, but he is free to challenge the reasoning used to reach the result in defending that result if another party appeals. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-282, 2 NRC 9, 10 at n.1 (1975). The prevailing party is free to urge any ground in defending the result, including grounds rejected by the Licensing Board. Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 357 (1975). See also Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-793, 20 NRC 1591, 1597 (1984).
- (2) A third party entering a special appearance to defend against discovery may appeal. Kansas Gas & Electric Co.

(Wolf Creek Nuclear Generating Station, Unit 1), ALAB-311, 3 NRC 85, 87-88 (1976).

- (3) As to orders denying a petition to intervene, only the petitioner who has been excluded from the proceeding by the order may appeal. USERDA (Clinch River Breeder Reactor Plant), ALAB-345, 4 NRC 212 (1976). In such an appeal, other parties may file briefs in support of or opposition to the appeal. Id.
- (4) A party to a Licensing Board proceeding has no standing to press before an Appeal Board the grievances of other parties to the proceeding not represented by him. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-631, 13 NRC 87,89 (1981), citing, Puget Sound Power and Light Co. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-556, 10 NRC 30 (1979).

Third parties may file amicus briefs with respect to any appeal, even though such third parties could not prosecute the appeal themselves. Consolidated Edison Co. of N.Y., Inc. (Indian Point Station, Unit 2), ALAB-369, 5 NRC 129 (1977); Consolidated Edison Co. of N.Y., Inc. (Indian Point, Units 1, 2 & 3), ALAB-304, 3 NRC 1, 7 (1976). The Appeal Board in ALAB-304 implied that leave to file an amicus brief may be necessary. The procedure for filing an amicus brief, including the requirement to seek to file such brief, is now contained in 10 CFR § 2.715.

One seeking to appeal an issue must have participated and taken all timely steps to correct the error. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-583, 11 NRC 447 (1980).

The Commission has long construed its Rules of Practice to allow the Staff to appeal from initial decisions. 10 CFR § 2.762 explicitly treats the Staff as a party for purposes of filing appeals. In the Matter of Radiation Technology, Inc., ALAB-567, 10 NRC 533, 547-548 (1979). Although a party generally may appeal only on a showing of discernible injury, the Staff may appeal on questions of precedential importance. A question of precedential importance is a ruling that would with probability be followed by other Boards facing similar questions. A question of precedential importance can involve a question of remedy. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18, 23-25 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

5.3 How to Appeal

The general rules as to the manner of taking an appeal are set out in 10 CFR § 2.762. Formerly under that regulation, an appeal was taken by the filing of exceptions within ten days after service of the initial decision. Recent changes to 10 CFR § 2.762

require only the filing of a notice of appeal within the same time period. A supporting brief must be filed within 30 days after the notice of appeal has been filed, although the Staff has 40 days to file such a brief. Other parties may file supporting or opposing briefs in response within 30 days (40 days for the Staff) after the initial supporting brief of the appellant. See Sections 5.4 (Time for Filing Appeals), 5.9 (Perfecting Appeals), 5.10 (Briefs on Appeal) and 5.13 (Appeals from Orders, Rulings, Initial Decisions, Partial Initial Decisions) for further discussion of these matters.

5.4 Time for Filing Appeals

As a general rule, only "final" actions are appealable. The test for "finality" for appeal purposes is essentially a practical one. For the most part, a Licensing Board's action is final when it either disposes of a major segment of a case or terminates a party's right to participate. Rulings that do neither are interlocutory. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 758 (1975); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-690, 16 NRC 893, 894 (1982), citing, Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 758 (1975); Nuclear Engineering Co., Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-606, 12 NRC 156, 160 (1980); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1256 (1982); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-77, 18 NRC 1365, 1394-1395 (1983).

The requirement of finality applies with equal force to both appeals from rulings on petitions to intervene pursuant to 10 CFR § 2.714a, and appeals from initial decisions pursuant to 10 CFR § 2.762. Waterford, supra, at 16 NRC 895 n.2.

Appeals from interlocutory orders issued by Licensing Boards must await the initial decision rendered by the Board at the end of the case. 10 CFR §§ 2.760 and 2.762; Cincinnati Gas and Electric Co. (William H. Zimmer Station), ALAB-633, 13 NRC 94 (1981), citing, Boston Edison Co. (Pilgrim Station, Unit 2), ALAB-269, 1 NRC 411 (1975).

In general, an immediately effective Licensing Board initial decision is a "final order," even though subject to appeal within the agency, unless its effectiveness has been administratively stayed pending the outcome of further Commission review. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-349, 4 NRC 235 (1976). In other areas, an order granting discovery against a third party is "final" and appealable as of right. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-311, 3 NRC 85, 87 (1976); Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-122, 6 AEC 322 (1973). Similarly, a Licensing Board order on the issue of whether

offsite activity can be engaged in prior to issuance of an LWA or a CP is appealable. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-331, 3 NRC 771, 774 (1976). When a Licensing Board grants a Part 70 license to transport and store fuel assemblies during the course of an OL hearing, the decision is not interlocutory and is immediately appealable. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-76-1, 3 NRC 73, 74 (1976). Partial initial decisions which do not yet authorize construction activities nevertheless may be significant and, therefore, appealable as of right. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Units 1 & 2), ALAB-301, 2 NRC 853, 854 (1975). Similarly, a Licensing Board's decision authorizing issuance of an LWA and rejecting the applicant's claim that it is entitled to issuance of a construction permit is final for the purposes of appellate review. Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-461, 7 NRC 313, 318 (1978).

A protracted withholding of action on request for relief may be treated as tantamount to a denial of the request and final action. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-417, 5 NRC 1442 (1977); Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB-376, 5 NRC 426, 428 (1977). At least in those instances where the delay involves a Licensing Board's failure to act on a petition to intervene, such a "denial" of the petition is appealable. Greenwood, supra.

As previously noted, an appeal is taken by the filing of a notice of appeal within ten days after service of the initial decision. Licensing Boards may not vary or extend the appeal periods provided for in the regulations. Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-310, 3 NRC 33 (1976); Consolidated Edison Co. of N.Y., Inc. (Indian Point Station, Unit 3), ALAB-281, 2 NRC 6 (1975). While a motion for a time extension may be filed with the Appeal Board and will sometimes be granted in complex cases, mere agreement among the parties is not sufficient to show good cause for an extension. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-154, 6 AEC 827 (1973).

The rules for taking an appeal also apply to appeals from partial initial decisions. Once a partial initial decision is rendered, an appeal must be filed immediately in accordance with the regulations or the appeal is waived. Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-195, 7 AEC 455, 456 at n.2 (1974). See also Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Units 1 & 2), ALAB-301, 2 NRC 853, 854 (1975).

Although the time limits established by the Rules of Practice with regard to appeals from Licensing Board decisions and orders are not jurisdictional, Appeal Board policy is to construe them strictly. Hence untimely appeals are not accepted absent a

demonstration of extra ordinary and unanticipated circumstances. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-684, 16 NRC 162, 165 n.3 (1982), citing, Nuclear Engineering Co. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-606, 12 NRC 156, 160 (1980); 10 CFR Part 2, App. A, IX(d)(4).

The time limits imposed in 10 CFR § 2.762(a) for filing appeal briefs refer to the date upon which the appeal was filed and not to when it was originally due for filing prior to a time extension. Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 125 (1977).

It is accepted appellate practice for the appeal period specified in 10 CFR § 2.762(a) to be tolled while the trial tribunal has before it an authorized and timely-filed petition for reconsideration of the decision or order in question. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-659, 14 NRC 983 (1981).

Pursuant to 10 CFR § 2.714a, an appeal concerning an intervention petition must await the ultimate grant or denial of that petition. Detroit Edison Company (Greenwood Energy Center, Units 2 & 3), ALAB-472, 7 NRC 570, 571 (1978). A Licensing Board order which determines that petitioner has met the "interest" requirement for intervention and that mitigating factors outweigh the untimeliness of the petition but does not rule on whether petitioner has met the "contentions" requirement is not a final disposition of the petition seeking leave to intervene. Greenwood, supra, at 7 NRC 571.

The Appeal Board does not generally characterize its own decisions as final or not final for the purpose of review. Its opinion would only be advisory, and the Appeal Board does not render advisory opinions in the absence of the most compelling considerations. The Office of the General Counsel may interpret 10 CFR §§ 2.770 and 2.771 (final decisions) pursuant to its mandate under 10 CFR § 1.32(f), and any party may request an interpretation of these regulations on finality if it so desires. Tennessee Valley Authority (Hartsville Nuclear Plants, Units 1A, 2A, 1B & 2B), ALAB-467, 7 NRC 459, 463 (1978).

Finality of a decision is usually determined by examining whether it disposes of at least a major segment of the case or terminates a party's right to participate. The general policy is to strictly enforce time limits for appeals following a final decision. However, where the lateness of filing was not due to a lack of diligence, but, rather, to a misapprehension about the finality of a Board decision, the Appeal Board will allow the appeal as a matter of discretion. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-606, 12 NRC 156, 159-160 (1980).

A petitioner's request that the denial of his intervention petition be overturned, treated as an appeal under 10 CFR § 2.714a, will be denied as untimely where it was filed almost 3 months after the issuance of a Licensing Board's order, especially in the absence of a showing of good cause for the failure to file an appeal on time. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-547, 9 NRC 638, 639 (1979).

5.5 Matters Considered on Appeal

Where a matter has been considered by the Commission, it may not be reconsidered by a Board. Commission precedent must be followed. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-584, 11 NRC 451, 463-465 (1980).

One may not appeal from an order delaying a ruling, when appeal will lie from the ruling itself. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-585, 11 NRC 469, 470 (1980).

Although a party generally may appeal only on a showing of discernible injury, the Staff may appeal on questions of precedential importance. A question of precedential importance is a ruling that would with probability be followed by other Boards facing similar questions. A question of precedential importance can involve a question of remedy. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18, 23-25 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

As a general rule, a party may seek appellate redress only on those parts of a decision or ruling which he can show will result in some discernible injury to himself. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-252, 8 AEC 1175, aff'd, CLI-75-1, 1 NRC 1 (1975). Within this rule, an intervenor can appeal as to all issues, whether or not raised by his or her own contentions. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 863 (1974). There is some indication that a matter of recurring importance may be appealed in a particular case even though it may no longer be determinative in the case. However, if it is of insufficient general importance (for instance, whether existing guidelines concerning cross-examination were properly applied in an individual case), the Appeal Board will refuse to hear the appeal. Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-461, 7 NRC 313, 316 (1978).

There is no right to an administrative appeal on every factual finding. Tennessee Valley Authority (Hartsville Nuclear Plants, Units 1A, 2A, 1B & 2B), ALAB-467, 7 NRC 459, 461 at n.5 (1978).

In normal circumstances, an appeal will lie only from unfavorable action taken by the Licensing Board, not from wording of a

decision with which a party disagrees but which has no operative effect. Duke Power Company (Cherokee Nuclear Stations, Units 1, 2 & 3), ALAB-482, 7 NRC 979, 980 (1978).

5.5.1 Issues Raised for the First Time on Appeal

Although the Appeal Board "might make an exception in the case of a serious substantive issue as to which a genuine problem has been demonstrated, (it) ordinarily will not entertain an issue raised for the first time on appeal." Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-463, 7 NRC 341, 348 (1978) (issues not raised in either proposed findings or exceptions to the initial decision). Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 907 (1982), citing, Hartsville, supra; Public Service Electric and Gas Co. (Salem Generating Station, Unit 1), ALAB-650, 14 NRC 43, 49 (1981); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-709, 17 NRC 17, 22 (1983). Thus, as a general rule, an appeal may be taken only as to matters or issues raised at the hearing. Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43 (1981); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 2), ALAB-486, 8 NRC 9, 28 (1978); Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-335, 3 NRC 830, 842 at n.26 (1976); Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1021 (1973); Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-123, 6 AEC 331, 343 (1973). The Appeal Board will not entertain a contention for the first time on appeal, absent a serious substantive issue, where a party has not pursued the contention before the Licensing Board through proposed findings of fact. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-680, 16 NRC 127, 143 (1982), citing, Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 49 (1981). The Appeal Board's disinclination to entertain an issue raised for the first time on appeal is particularly strong where the issue and factual averments underlying it could have been, but were not, timely put before the Licensing Board. Puerto Rico Electric Power Authority (North Coast Nuclear Power Plant, Unit 1), ALAB-648, 14 NRC 34 (1981).

Although the absence of an appeal does not deprive the Appeal Board of the right to review an issue contested before a Licensing Board, the Appeal Board must be judicious in taking up new matters not previously put in controversy. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-491, 8 NRC 245, 247 (1978).

An appeal may only be based on matters and arguments raised below. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 242 (1980). A party cannot be heard to complain later about a decision that fails to address an issue no one sought to raise. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-778, 20 NRC 42, 47-48 (1984). A party is not permitted to raise on appellate review Licensing Board practices to which it did not object at the hearing stage. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 378 (1985).

The jurisdiction of an Appeal Board to consider new matters arising during the course of its review of a Licensing Board decision does not hinge upon the nature of the proceeding. Rather, irrespective of whether a construction permit or an operating license is involved, the pivotal factor is the posture of the case and the degree of finality which has attached to the agency action which is in question. Where finality has attached to some but not all issues, Appeal Board jurisdiction to entertain new matters is dependent upon the existence of a reasonable nexus between those matters and the issues remaining before the Board. Virginia Electric & Power Company (North Anna Nuclear Power Station, Units 1 & 2), ALAB-551, 9 NRC 704, 707 (1979).

5.5.2 Effect on Appeal of Failure to File Proposed Findings

The Appeal Board is not required to review exceptions where no proposed findings and rulings were filed by the appellant on the issue with respect to which the appeal is taken. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-280, 2 NRC 3, 4 n.2 (1975). However, while a party's failure to file proposed findings on an issue may be "taken into account" by the Appeal Board if the party later appeals that issue, Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 864 (1974); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 333 (1973), absent a Licensing Board order requiring the submission of proposed findings of fact and conclusions of law, an intervenor that does not make such a filing nevertheless is free to pursue on appeal all issues it litigated below. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-709, 17 NRC 17, 19, 20 (1983).

5.5.3 Matters Considered on Appeal of Ruling Allowing Late Intervention

One exception to the rule prohibiting interlocutory appeals is that a party opposing intervention may appeal an

order admitting the intervenor. 10 CFR § 2.714a. See also Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-339, 4 NRC 20, 23 n.7 (1976). However, since Licensing Boards have broad discretion in allowing late intervention, an Appeal Board's review of an order allowing late intervention is limited to determining whether that discretion has been abused. Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-342, 4 NRC 98, 107 (1976); Public Service Co. of Indiana, Inc., ALAB-339, *supra*. The Appeal Board will look to the papers filed in the case and the uncontroverted facts set forth therein to determine if the Licensing Board abused its discretion. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-420, 6 NRC 8 (1977).

5.5.4 Consolidation of Appeals on Generic Issues

The Appeal Board consolidated and scheduled for hearing radon cases where intervenors are actively participating, and held the remaining cases in abeyance. Where the issues are largely generic, consolidation will result in a more manageable number of litigants, and relevant considerations will likely be raised in the first group of consolidated cases. Philadelphia Electric Co., (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-540, 9 NRC 428, 433 (1979), *reconsid. denied*, ALAB-546, 9 NRC 636 (1979).

5.6 Appeal Board Action

5.6.1 Role of Appeal Board

The Appeal Board's role is generally that of an appellate tribunal. For example, it will not police a licensee's compliance with license conditions, a matter suitable for the Commission's enforcement branch. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-356, 4 NRC 525 (1976).

Under 10 CFR § 2.718(i) and § 2.785(b), Appeal Boards have the power to direct the certification of legal issues raised in proceedings pending before Licensing Boards. Exceptional circumstances must be demonstrated, however, before a Board will exercise that authority. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-737, 18 NRC 168, 171 (1983), *citing*, Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478, 483 (1975).

The Appeal Board reviews all initial decisions and the record, regardless of whether appeals have been taken. See, e.g., South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-114, 6 AEC 253 (1973); Cincinnati Gas & Electric Co. (William H. Zimmer Station), ALAB-79, 5 AEC 342 (1972). Where appeals are filed, the Appeal Board is not limited in its review to those issues raised in the appeals. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358, 361 (1973). Although it has the power to do so, the Appeal Board will not ordinarily conduct a de novo review of the record and make its own independent findings of fact since the Licensing Board is the basic fact-finder under Commission procedures. Wisconsin Electric Power Co. (Point Beach Nuclear Plant No. 2), ALAB-78, 5 AEC 319 (1972). Nevertheless, the Appeal Board, as part of its customary sua sponte review of an initial decision in the absence of an appeal, may examine independently and with care the totality of the evidence if the matter at hand is of an unusual character. Southern California Edison Company and San Diego Gas & Electric Company (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-432, 6 NRC 465 (1977). In this vein, in an operating license proceeding, the Appeal Board will search the record under its sua sponte authority to ensure that there are no significant safety issues requiring corrective action. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-729, 17 NRC 814, 889 (1983), aff'd on other grounds, CLI-84-11, 20 NRC 1 (1984). In addition, an Appeal Board has authority to make factual findings, on the basis of record evidence, which are different from those reached by a Licensing Board and can issue supplementary findings of its own. Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 42 (1977). The Appeal Board is free to disagree with the lower board's regulatory interpretation even if no party presses an appeal on the issue. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-680, 16 NRC 127, 135 n.10 (1982), citing, Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245, 247 (1978). The Appeal Board decision can be based upon grounds completely foreign to those relied upon by the Licensing Board so long as the parties had a sufficient opportunity to address those new grounds with argument and, where appropriate, evidence. Id. However, notwithstanding its authority to do so, the Appeal Board will normally be reluctant to search the record to determine whether it included sufficient information to support conclusions for which the Licensing Board failed to provide adequate justification. A remand,

very possibly accompanied by an outright vacation of the result reached below, would be the usual course where the Licensing Board's decision does not adequately support the conclusions reached therein. Seabrook Station, supra, 6 NRC at 42.

An Appeal Board is not obligated to rule on every discrete point adjudicated below, so long as the Board is able to render a decision on other grounds that effectively dispose of the appeal. Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 466 n.25 (1982), citing, Houston Light and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-625, 13 NRC 13, 15 (1981).

The Appeal Board is not subject to the jurisdictional limitations placed upon Federal courts by the "case or controversy" provision in Article III of the Constitution. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), ALAB-714, 17 NRC 86, 93 (1983), citing, Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 54 (1978), remanded on other grounds sub nom. Minnesota v. Nuclear Regulatory Commission, 602 F.2d 412 (D.C. Cir. 1979). Therefore, there is no insuperable barrier to the Appeal Board's rendition of an advisory opinion on issues which have been indisputably mooted by events occurring subsequent to a Licensing Board's decision. However, this course will not be embarked upon in the absence of the most compelling cause. Comanche Peak, 17 NRC at 93; Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-455, 7 NRC 41, 54 (1978).

The Appeal Board, and the NRC in general, lacks the power to decide whether a civil penalty assessed against an applicant should be borne by the applicant's stockholders rather than its ratepayers. This is a matter to be determined by State regulatory agencies. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 198 (1978).

Once a partial initial decision (PID) has been appealed, supervening factual developments relating to major safety issues considered in the PID should be raised before the Appeal Board, not the Licensing Board. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-383, 5 NRC 609 (1977).

The Appeal Board normally lacks jurisdiction to entertain motions seeking review only of actions of the Director of Nuclear Reactor Regulation; the Commission itself is the forum for such review. See 10 CFR § 2.206(c), Detroit

Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-466, 7 NRC 457 (1978).

Although the absence of an appeal does not deprive the Appeal Board of the right to review an issue contested before a Licensing Board, the Appeal Board must be judicious in taking up new matters not previously put in controversy. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-491, 8 NRC 245, 247 (1978).

An Appeal Board has the authority to take evidence -- particularly in regard to limited matters as to which the record is incomplete. Tennessee Valley Authority (Hartsville Nuclear Plants, Units 1A, 2A, 1B & 2B), ALAB-467, 7 NRC 459, 461 (1978).

It is well-settled that the Appeal Board is empowered to decline the acceptance of a Licensing Board referral. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 464 (1982), vacated in part on other grounds, CLI-83-19, 17 NRC 1041 (1983); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-634, 13 NRC 96 (1981); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1191 (1977).

When the time within which the Commission might have elected to review an Appeal Board decision expires, any residual jurisdiction retained by the Appeal Board expires. 10 CFR § 2.717(a); Washington Public Power Supply System (WPPSS Nuclear Project Nos. 3 and 5), ALAB-501, 8 NRC 381, 382 (1978).

An adjudicatory board does not have jurisdiction to re-open a record with respect to an issue when finality has attached to the resolution of that issue. This conclusion is not altered by the fact that the board has another discrete issue pending before it. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-513, 8 NRC 694, 695 (1978); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-83-25, 17 NRC 681, 684 (1983); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-782, 20 NRC 838, 841 n.8 (1984), citing, Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-766, 19 NRC 981, 983 (1984); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-792, 20 NRC 1585, 1588 (1984), clarified, ALAB-797, 21 NRC 6 (1985).

Where finality has attached to some, but not all, issues, an Appeal Board has jurisdiction to consider new matters

when there is a reasonable nexus between those matters and the issues remaining before the Board. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-782, 20 NRC 838, 841 n.9 (1984), citing, Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-551, 9 NRC 704, 707 (1979); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-792, 20 NRC 1585, 1586 (1984), clarified, ALAB-797, 21 NRC 6 (1985). It is unimportant whether the issues pending before the Appeal Board arose from a motion to reopen the record or from an appeal of a Licensing Board decision. The focus is on whether and what issues remain before the Appeal Board. Waterford, supra, 20 NRC at 1589 n.4, citing, North Anna, supra, 9 NRC at 708.

Appeal Board review will be routinely undertaken of any final disposition of a licensing proceeding that either was or had to be founded upon substantive determinations of significant safety or environmental issues. Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-571, 10 NRC 687, 692 (1979), cited in Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 2 and 3), ALAB-652, 14 NRC 627, 628 (1981); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-739, 18 NRC 335, 341 (1983), citing, Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799, 803 (1981).

In the course of its review of an initial decision in a construction permit proceeding, an Appeal Board is free to sua sponte raise issues which were neither presented to nor considered by the Licensing Board. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-551, 9 NRC 704, 707 (1979).

If conditions on a license are invalid, the Appeal Board may either remand the matter or prescribe a remedy itself. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-577, 11 NRC 18, 31 (1980), reconsidered, ALAB-581, 11 NRC 233 (1980), modified, CL1-80-12, 11 NRC 514 (1980).

Once an Appeal Board has wholly terminated its review of an initial decision -- whether it be a construction permit or an operating license proceeding -- its jurisdiction over the proceeding comes to an end. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-551, 9 NRC 704, 708 (1979).

Appeal Board opinions that, in the circumstances of the particular case, are essentially advisory in nature will be reserved (if given at all) for issues of demonstrable

recurring importance. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 390 n.4 (1983).

Jurisdiction to rule on a motion to reopen filed after an appeal has been taken to an initial decision rests with the Appeal Board rather than the Licensing Board. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-726, 17 NRC 755, 757 n.3 (1983), citing, Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-699, 16 NRC 1324, 1327 (1982); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-85-19, 21 NRC 1707, 1713 n.5 (1985).

Until exceptions are filed, there is literally no appeal to invoke Appeal Board jurisdiction. Limerick, supra, 17 NRC at 758. See generally 10 CFR § 2.762(a); 10 CFR § 2.785. Thus, although an NRC Appeal Board has broader powers than most appellate bodies, neither the Board's sua sponte review authority nor its power, in exceptional circumstances, to take evidence and make its own factual determinations enhances its knowledge of a proceeding before the proceeding reaches its docket or operates to give it jurisdiction over an initial decision immediately upon the initial decision's issuance. Limerick, supra, 17 NRC at 758.

5.6.2 Parties' Opportunity to be Heard on Appeal

On considering an issue on appeal, the Appeal Board should not act on the issue on the basis of the receipt of Staff views only without affording equal opportunity to other parties to express their views. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLC-76-14, 4 NRC 163 (1976); Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-74-12, 7 AEC 203, 204 n.3 (1974).

Requests for emergency relief which require adjudicatory boards to act without giving the parties who will be adversely affected a chance to be heard ought to be reserved for palpably meritorious cases and filed only for the most serious reasons. The Appeal Board will grant emergency relief without affording the adverse parties at least some opportunity to be heard in opposition only in the most extraordinary circumstances. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-395, 5 NRC 772, 780 n.27 (1977).

5.6.3 Standards for Reversing Licensing Board on Findings of Fact

The Commission's regulations explicitly provide that the Commission or the Appeal Board has the authority to modify or set aside findings made by the Licensing Board. 10 CFR §§ 2.740(b), 2.785; Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 29 (1978).

In acting for the Commission, the Appeal Board need not accept every finding a Licensing Board makes and the Appeal Board will not apply the "clearly erroneous" test of Rule 52(a) of the Federal Rules of Civil Procedure, which governs appellate review of district court findings. But the Appeal Board is not free to disregard the fact that Licensing Boards are the Commission's primary fact-finding tribunals. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-303, 2 NRC 858, 867 (1975). In this regard, Appeal Boards are reluctant to make essentially basic environmental findings which did not receive Staff consideration in the FES or adequate attention at the Licensing Board hearing. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), ALAB-260, 1 NRC 51, 55 (1975).

Although an Appeal Board is not bound by the factual findings of the Licensing Board, until the Appeal Board can review the record itself or the appellant demonstrates the inadequacy of the Licensing Board's findings, those findings deserve the Appeal Board's respect. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), ALAB-385, 5 NRC 621 (1977).

The normal deference that an Appellate body owes to the trier of the facts when reviewing a decision on the merits is thus even more compelling at the preliminary state of review. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-680, 16 NRC 127, 133 (1982), citing, Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), ALAB-385, 5 NRC 621, 629 (1977).

In general, an Appeal Board has the right to reject or modify findings of a Licensing Board if, after giving the Licensing Board's decision the probative force it intrinsically commands, the Appeal Board is convinced that the record compels a different result. Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), ALA-264, 1 NRC 347, 357 (1975); accord, Northern Indiana Public Service Co., ALAB-303 *supra*; Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-781, 20 NRC 819, 834 (1984). The same standard applies

even if the Appeal Board is conducting a review *sua sponte*. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799, 803 (1981). In fact, where the record will fairly sustain a result deemed "preferable" by the agency to the one selected by the Licensing Board, the agency may substitute its judgment for that of the lower Board. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-367, 5 NRC 92 (1977); Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), ALAB-355, 4 NRC 397, 402-405 (1976). Nevertheless, a finding by a Licensing Board will not be overturned simply because the Appeal Board might have reached a different result had it been the primary fact-finder. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 2), ALAB-254, 8 AEC 1184, 1187-1188 (1975); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), ALAB-78, 5 AEC 319, 322 (1972). Moreover, the "substantial evidence" rule does not apply to the NRC's internal review process and hence does not control an Appeal Board's evaluation of Licensing Board decisions. Catawba, *supra*, 4 NRC at 402-405.

Notwithstanding its authority to do so, the Appeal Board will normally be reluctant to search the record to determine whether it included sufficient information to support conclusions for which the Licensing Board failed to provide adequate justification. A remand, very possibly accompanied by an outright vacation of the result reached below, would be the usual course where the Licensing Board's decision does not adequately support the conclusions reached therein. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 42 (1977). Thus, a Licensing Board's failure to clearly set forth the basis for its decision is ground for reversal. The Appeal Board is not constrained to reverse the Licensing Board, however. The Appeal Board may make factual findings based on its own review of the record and decide the case accordingly. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1087 n.12 (1983).

On specific matters, a Licensing Board's determination as to a petitioner's "personal interest" will be reversed only if it is irrational. Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 244 (1973); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188, 193 (1973). Where a Licensing Board has permitted a petitioner to amend his petition to cure defects prior to issuance of a final order, allowance of an opportunity to amend will not be distributed by the Appeal Board absent a showing of gross abuse of discretion. Prairie Island, *supra*.

A determination of fact in an adjudicatory proceeding which is necessarily grounded wholly in a nonadversary presentation is not entitled to be accorded generic effect, even if the determination relates to a seemingly generic matter rather than to some specific aspect of the facility in question. Washington Public Power Supply System (WPPSS Nuclear Projects No. 3 & 5), ALAB-485, 7 NRC 986, 980 (1978).

Adjudicatory decisions must be supported by evidence properly in the record. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-580, 11 NRC 227, 230 (1980).

Where a Licensing Board imposes an incorrect remedy, an Appeal Board will search for a proper one. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-581, 11 NRC 233, 234-235 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

5.6.4 Grounds for Immediate Suspension of Construction Permit by Appeal Board

The Appeal Board, ancillary to its appellate jurisdiction, has authority to suspend a decision authorizing issuance of a construction permit. Union Electric Co. (Callaway Plant, Units 1 & 2), ALAB-348, 4 NRC 225 (1976). Immediate revocation or suspension of a construction permit, upon review of the issuance thereof, is appropriate if the Appeal Board finds deficiencies that:

- (a) pose a hazard during construction;
- (b) need to be corrected before further construction takes place;
- (c) are incorrigible; or
- (d) might result in significant environmental harm if construction is permitted to continue.

Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-268, 1 NRC 383, 401 (1975).

Whether a public utility commission's consent is required before construction contracts can be entered into and carried out is a question of State law. If the State authorities want to suspend construction pending the results of the public utility commission's review, it is their prerogative. But the Appeal Board will not suspend construction on the "strength of nothing more than potentiality of action adverse to the facility being taken by

another agency" (citation omitted). Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-443, 6 NRC 741, 748 (1977).

5.6.5 Immediate Effectiveness of Appeal Board Decision

Decisions of Appeal Boards which are immediately effective are presumptively valid. Unless and until such a decision is stayed or overturned by the appropriate authority, it is entitled to full recognition. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-423, 6 NRC 115, 117 (1977).

Decisions and orders of an Appeal Board are immediately effective. Absent an Appeal Board's or the Commission's issuance of a stay, a Licensing Board is both entitled and duty-bound to carry out Appeal Board directives with suitable dispatch. Duke Power Company (Perkins Nuclear Station, Units 1, 2, and 3), ALAB-597, 11 NRC 870, 873-874 (1980).

5.6.6 Effect of Appeal Board Affirmance as Precedent

If an Appeal Board affirms a Licensing Board decision as to which no exceptions have been filed without extended discussion, the Licensing Board's decision does not necessarily have the same precedential value as Appeal Board decisions. Portland General Electric Co. (Trojan Nuclear Plant), ALAB-181, 7 AEC 207, 208 n.4 (1974). Where no exceptions have been filed and the Appeal Board states that there is "no error requiring corrective action," the Appeal Board's affirmance of the Licensing Board's decision cannot be read as necessarily signifying approval of everything said by the Licensing Board. The inference cannot be drawn that the Appeal Board agrees with all the reasoning by which the Licensing Board justified its decision or with the Licensing Board's discussion of matters which do not have a direct bearing on the outcome. Id; Consumers Power Co. (Big Rock Point Plant), ALAB-795, 21 NRC 1, 2-3 (1985).

An Appeal Board will not give stare decisis effect to Licensing Board conclusions on legal issues not brought to it by way of an appeal. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), ALAB-713, 17 NRC 83, 85 (1983), citing, Duke Power Co. (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-482, 7 NRC 979, 981 n.4 (1978); General Electric Co. (Vallecitos Nuclear Center - General Electric Test Reactor, Operating License No. TR-1), ALAB-720, 17 NRC 397, 402 n.7 (1983); Consumers Power Co. (Big Rock Point Plant), ALAB-795, 21 NRC 1, 2 (1985).

5.6.6.1 Precedential Effect of Unpublished Opinions of Appeal Boards

Unless published in the official NRC reports, decisions and orders of Appeal Boards are usually not to be given precedential effect in other proceedings. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-592, 11 NRC 744, 745 (1980).

5.6.7 Disqualification of Appeal Board Member

In denying a petition to review a decision by an Appeal Board member who decided not to recuse himself, the Commission ruled that in the absence of bias, an Appeal Board member who participated as an adjudicator on appeal in a construction permit proceeding need not disqualify himself from participating as an adjudicator in the operating license proceeding for the same facility. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-80-11, 11 NRC 511, 512 (1980).

5.7 Stays Pending Appeal

Under 10 CFR § 2.764(f)(2), upon receipt of a Licensing Board's decision authorizing the issuance of a full power operating license, the Commission will determine, sua sponte, whether to stay the effectiveness of the decision. Criteria to be considered by the Commission include, but are not limited to: the gravity of the substantive issue; the likelihood that it has been resolved incorrectly below; and the degree to which correct resolution of the issue would be prejudiced by operation pending review. Until the Commission speaks, the Licensing Board's decision is considered to be automatically stayed. Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-647, 14 NRC 27 (1981).

Before a full power license can be issued for a plant, the Commission must complete its immediate effectiveness review of the pertinent Licensing Board decision pursuant to 10 CFR § 2.764(f)(2). Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-680, 16 NRC 127, 144 n.26 (1982).

A stay of the effectiveness of a Licensing Board decision pending appeal of that decision to the Appeal Board may be sought by the party appealing the decision. Such a stay is normally sought by written motion, although, in extraordinary circumstances, a stay ex parte may be granted. See, e.g., Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-192, 7 AEC 420 (1974). The movant may submit affidavits in support of his motion; opposing parties may file opposing affidavits, and it is appropriate for the appellate tribunal to accept and consider

such affidavits in ruling on the motion for a stay. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-356, 4 NRC 525 (1976). The party seeking a stay bears the burden of marshalling the evidence and making the arguments which demonstrate his entitlement to it. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-395, 5 NRC 772, 785 (1977).

General assertions, in conclusionary terms, of alleged harmful effects are insufficient to demonstrate entitlement to a stay. United States Department of Energy, Project Management Corp., Tennessee Valley Authority (Clinch River Breeder Reactor Plant), ALAB-721, 17 NRC 539, 544 (1983), citing, Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-505, 8 NRC 527, 530 (1978).

In the past it has been held that, as a general rule, motions for stay of a Licensing Board action should be directed to the Licensing Board in the first instance. Under those earlier rulings, the Appeal Board made it clear that, while filing a motion for a stay with the Licensing Board is not a jurisdictional prerequisite to seeking a stay from the Appeal Board, Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-338, 4 NRC 10 (1976), the failure, without good cause, to first seek a stay from the Licensing Board is a factor which the Appeal Board may properly take into account in deciding whether it should itself grant the requested stay. See Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-395, 5 NRC 772 (1977); Public Service Co. of New Hampshire, ALAB-338 supra. See also Toledo Edison Co. (Davis-Besse Nuclear Power Plant), ALAB-25, 4 AEC 633, 634 (1971). More recently, however, amendments to 10 CFR § 2.788 on stays pending review have made it clear that a request for stay may be filed with either the Licensing Board or the Appeal Board. 10 CFR § 2.788(f).

An Appeal Board has the power to stay the effectiveness of conditions imposed in a construction permit without staying the effectiveness of the permit itself. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 & 3), ALAB-385, 5 NRC 621 (1977).

An Appeal Board may also entertain and grant a motion for a stay pending remand of a Licensing Board decision. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), CL1-77-8, 5 NRC 503 (1977).

In addition to stays pending appeals to the Appeal Board, the Appeal Board itself will entertain requests for stays pending judicial review of its own decision. The Virginia Petroleum Jobbers criteria (these criteria have been incorporated into the regulations -- see Section 5.7.1 *infra*) for granting stays are applicable in such a situation. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 272 (1974).

A party aggrieved by an Appeal Board decision denying a stay should apply to the Commission for a stay under 10 CFR § 2.788(a), (h), rather than petition for review under 10 CFR § 2.786(b). Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 2), CLI-78-3, 7 NRC 307, 308 at n.2 (1978); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), CLI-78-1, 7 NRC 1, 30 at n.44 (1978). Under 10 CFR § 2.788(a), a party may move for a stay of an Appeal Board decision pending Commission review if such motion is filed within the period of time after service of the decision for which a stay is sought as set forth in Section 2.788(a). Consolidated Edison Co. of N.Y., Inc. (Indian Point Station, No. 2), ALAB-414, 5 NRC 1425, 1427 (1977). The date of service for purposes of computing the time for filing a stay motion under Section 2.788 is the date on which the Docketing and Service Branch of the Office of the Secretary of the Commission serves the order or decision. Id. at 5 NRC 1427-1428.

Despite its subordinate status, an Appeal Board is empowered by 10 CFR § 2.764(f)(2) to grant a 10 CFR § 2.788 stay without regard to what the Commission has done or might do in its sua sponte review. This power is granted at least in part because the factors that the Commission is to consider in making its 10 CFR § 2.764 determination do not coincide with the criteria set out for the Appeal Board in the Virginia Petroleum Jobbers case. Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-647, 14 NRC 27, at 30, n.6 (1981).

If, absent a stay pending appeal, the status quo will be irreparably altered, grant of a stay may be justified to preserve the Commission's ability to consider, if appropriate, the merits of a case. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-83-6, 17 NRC 333, 334 (1983).

In certain situations an Appeal Board may review a stay request under the criteria embodied in the Commission's "immediate effectiveness" rule, 10 CFR § 2.764. When doing so, the Board will look at two factors in addition to those laid out in 10 CFR § 2.788(e): whether effectiveness of the initial decision will create novel safety or environmental issues in light of the Three Mile Island accident or prejudice review of significant safety or environmental issues. 10 CFR § 2.764(e)(2)(ii). United States Department of Energy, Project Management Corp., Tennessee Valley Authority (Clinch River Breeder Reactor Plant, ALAB-721, 17 NRC 539, 543 n.6 (1983)).

5.7.1 Requirements for a Stay Pending Appeal

The Rules of Practice do not provide for an automatic stay of an order upon the filing of a notice of appeal. Texas Utilities Co. (Comanche Peak Steam Electric Station, Units 1 and 2), ALAB-714, 17 NRC 86, 97 (1983).

The Appeal Board has long held that a stay of an initial decision will be granted only upon a showing similar to that required for a preliminary injunction in the Federal courts. Boston Edison Co. (Pilgrim Nuclear Power Station), ALAB-81, 5 AEC 348 (1972). The test to be applied for such a showing is that laid down in Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. (1958); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-338, 4 NRC 10 (1976); Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-221, 8 AEC 95, 96 (1974); Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-199, 7 AEC 478, 480 (1974); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-192, 7 AEC 420, 421 (1974). See also Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-647, 14 NRC 27 (1981); South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-643, 13 NRC 898 (1981); Florida Power and Light Co. (Turkey Point Nuclear Generating, Units 3 and 4), LBP-81-30, 14 NRC 357 (1981); Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-673, 15 NRC 688, 691 (1982); South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), LBP-82-84, 16 NRC 1183, 1184-85 (1982). Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-83-40, 18 NRC 93, 96-97 (1983); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-84-17, 20 NRC 801, 803 n.3 (1984); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-84-21, 20 NRC 1437, 1440 (1984); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-789, 20 NRC 1443, 1446 (1984); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-794, 20 NRC 1630, 1632 n.7 (1984); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-808, 21 NRC 1595 (1985); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-810, 21 NRC 1616 (1985). Under this test, four factors are examined:

- (1) has the movant made a strong showing that it is likely to prevail upon the merits of its appeal;
- (2) has the movant shown that, without the requested relief, it will be irreparably injured;
- (3) would the issuance of a stay substantially harm other parties interested in the proceeding;
- (4) where does the public interest lie?

The Virginia Petroleum Jobbers criteria for granting a stay have been incorporated into the regulations at 10 CFR § 2.788(e). Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-680, 16 NRC 127, 130 (1982). Since that section merely codifies longstanding agency practice which parallels that of the courts, Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-458 7 NRC 155, 170 (1978), prior agency case law delineating the application of the Virginia Petroleum Jobbers criteria presumably remains applicable.

The Virginia Petroleum Jobbers rule applies not only to stays of initial decisions of Licensing Boards, but also to stays of Licensing Board proceedings in general, Allied General Nuclear Services (Barnwell Nuclear Fuel Plant Separations Facility), ALAB-296, 2 NRC 671 (1975), and stays pending judicial review, Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 272 (1974). In addition, the concept of a stay pending consideration by the Appeal Board of a petition for directed certification has been recognized. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-307, 3 NRC 17 (1976). The rule applies to stays of limited work authorizations, Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-437, 6 NRC 630 (1977), as well as to requests for emergency stays pending final disposition of a stay motion. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-404, 5 NRC 1185, 1186-89 (1977). The rule also applies to stays of implementation and enforcement of radiation protection standards. Environmental Radiation Protection Standards for Nuclear Power Operations, (40 CFR § 190), CLI-81-4, 13 NRC 298 (1981); Uranium Mill Licensing Requirements (10 CFR Parts 30, 40, 70 and 150), CLI-81-9, 13 NRC 460, 463 (1981). It also applies to postponements of the effectiveness of a license amendment issued by the NRC Staff. In the case of a request for postponement of an amendment, the Commission has stated that a bare claim of an absolute right to a prior hearing on the issuance of a license amendment does not constitute a substantial showing of irreparable injury as required by 10 CFR § 2.788(e). Nuclear Fuel Services, Inc. and New York State Energy Research and Development Authority (Western New York Nuclear Service Center), CLI-81-29, 14 NRC 940 (1981).

Note that 10 CFR § 2.788 does not expressly deal with the matter of a stay pending remand of a proceeding to the Licensing Board. Prior to the promulgation of Section 2.788, the Commission held that the standards for issuance of a stay pending proceedings on remand are less stringent than those of the Virginia Petroleum Jobbers test. Public

Service Co. of N.H. (Seabrook Station, Units 1, 2 & 3), CLI-77-8, 5 NRC 503 (1977). In this vein, the Commission ruled that the propriety of issuing a stay pending remand was to be determined on the basis of a traditional balance of equities and on consideration of possible prejudice to further actions resulting from the remand proceedings. Similarly, in Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-395, 5 NRC 772 (1977), the Appeal Board ruled that the criteria for a stay pending remand differ from those required for a stay pending appeal. Thus, it appears that the criteria set forth in 10 CFR § 2.788 may not apply to requests for stays pending remand. In this same vein, where a litigant who has prevailed on a judicial appeal of an NRC decision seeks a suspension of the effectiveness of the NRC decision pending remand, such a suspension is not controlled by the Virginia Petroleum Jobbers criteria but, instead, is dependent upon a balancing of all relevant equitable considerations. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-458, 7 NRC 155, 159-60 (1978). In such circumstances, the negative impact of the court's decision places a heavy burden of proof on those opposing the stay. Id. at 7 NRC 160.

Where the four factors set forth in 10 CFR § 2.788(e) are applicable, no single one of the factors is, of itself, necessarily dispositive. Rather, the strength or weakness of the movant's showing on a particular factor will determine how strong his showing on the other factors must be in order to justify the relief he seeks. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-338, 4 NRC 10 (1976); Florida Power and Light Co. (Turkey Point Nuclear Generating, Units 3 and 4), LBP-81-30, 14 NRC 357 (1981). In any event, there should be more than a mere showing of the possibility of legal error by a Licensing Board to warrant a stay. Philadelphia Electric Co., ALAB-221 supra; Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-158, 6 AEC 999 (1973). The establishment of grounds for appeal is not itself sufficient to justify a stay. Rather, there must be a strong probability that no ground will remain upon which the Licensing Board's action could be based. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 & 3), ALAB-385, 5 NRC 621 (1977).

The factor which has proved most crucial in Appeal Board deliberations with regard to stays pending appeal is the question of irreparable injury to the movants if the stay is not granted. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-81-27, 14 NRC 795 (1981); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-437, 6 NRC 630, 532 (1977); Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), ALAB-716, 17 NRC

341, 342 n.1 (1983); United States Department of Energy, Project Management Corp., Tennessee Valley Authority (Clinch River Breeder Reactor Plant), ALAB-721, 17 NRC 539, 543 (1983); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-84-17, 20 NRC 801, 804 (1984); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-789, 20 NRC 1443, 1446 (1984); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-794, 20 NRC 1630, 1633 n.11 (1984); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-808, 21 NRC 1595, 1599 (1985). See, e.g., Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-27, 6 NRC 715, 716 (1977); Rochester Gas and Electric Corp. (Sterling Power Project, Nuclear Unit 1), ALAB-507, 8 NRC 551, 556 (1978); Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-481, 7 NRC 807, 808 (1978). See also Westinghouse Electronic Corp. (Exports to the Philippines), CLI-80-14, 11 NRC 631, 662 (1980). It is the established rule that a party is not ordinarily granted a stay of an administration order without an appropriate showing of irreparable injury. *Id.*, quoting Permian Basin Area Rate Cases, 390 U.S. 747, 773 (1968). The irreparable injury requirement is not satisfied by some cost merely feared as liable to occur at some indefinite time in the future. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 & 3), ALAB-385, 5 NRC 621 (1977). Nor are actual injuries, however substantial in terms of money, time and energy necessarily expended in the absence of a stay, sufficient to justify a stay if not irreparable. Davis-Besse, *supra*. Similarly, mere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-395, 5 NRC 772, 779 (1977); Allied-General Nuclear Services (Barnwell Nuclear Fuel Plant Separation Facility), ALAB-296, 2 NRC 671 (1975); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-84-17, 20 NRC 801, 804 (1984).

Similarly, the expense of an administrative proceeding is usually not considered irreparable injury. Uranium Mill Licensing Requirements (10 CFR Parts 30, 40, 70, and 150), CLI-81-9, 13 NRC 460, 465 (1981), citing Meyers v. Bethlehem Shipbuilding Corp., 303 U.S. 41 (1938) and Hornblower and Weeks-Hemphill Noyes, Inc. v. Csaky, 427 F. Supp. 814 (S.D.N.Y. 1977).

The "level or degree of possibility of success" on the merits necessary to justify a stay will vary according to the tribunal's assessment of the other factors that must be considered in determining if a stay is warranted. Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-437, 6 NRC 630,

632 (1977), citing, Washington Metropolitan Area Transit Commission v. Holiday Tours, 559 F.2d 841 (D.C. Cir. 1977). Where there is no showing of irreparable injury absent a stay and the other factors do not favor the movant, an overwhelming showing of likelihood of success on the merits is required to obtain a stay. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-404, 5 NRC 1185, 1186-1189 (1977). See also Florida Power & Light Co., ALAB-415, 5 NRC 1435, 1437 (1977) to substantially the same effect.

To make a strong showing of likelihood of success on the merits, the movant must do more than list the possible grounds for reversal. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 & 3), ALAB-385, 5 NRC 621 (1977); Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-81-27, 14 NRC 795 (1981).

On a motion for a stay, the burden of persuasion on the four factors of Virginia Petroleum Jobbers (now set forth in 10 CFR § 2.788) is on the movant. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 270 (1978); Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-81-27, 14 NRC 795 (1981).

In Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), ALAB-481, 7 NRC 807, 808 (1978), the Appeal Board stressed the importance of the irreparable injury requirement, stating that a party is not ordinarily granted a stay absent an appropriate showing of irreparable injury. Where a decision as to which a stay is sought does not allow the issuance of any licensing authorization and does not affect the status quo ante, the movant will not be injured by the decision and there is, quite simply, nothing for the Appeal Board to stay. Jamesport, supra.

The fact that an appeal might become moot following denial of a motion for a stay does not per se constitute irreparable injury. It must also be established that the activity that will take place in the absence of a stay will bring about concrete harm. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-810, 21 NRC 1616, 1620 (1985), citing, Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-794, 20 NRC 1630, 1635 (1984).

The importance of a showing of irreparable injury absent a stay was stressed by the Appeal Board in Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-505, 8 NRC 527, 530 (1978), where the Appeal Board indicated that a stay application which does not even attempt to make a showing of irreparable injury is virtually assured of failure.

If the movant for a stay fails to meet its burden on the first two 10 CFR § 2.788(e) factors, it is not necessary to give lengthy consideration to balancing the other two factors. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-810, 21 NRC 1616, 1620 (1985), citing, Catawba, supra, 20 NRC at 1635.

Although an applicant's economic interests are not generally within the proper scope of issues to be litigated in NRC proceedings, a Board may consider such interests in determining whether, under the third stay criterion, the granting of a stay would harm other parties. Thus, a Board may consider the potential economic harm to an applicant caused by a stay of the applicant's operating license. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-808, 21 NRC 1595, 1602-03 (1985). See, e.g., Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), CLI-85-3, 21 NRC 471, 477 (1985); Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-404, 5 NRC 1185, 1188 (1977).

10 CFR § 2.788 confers the right to seek stay relief only upon those who have filed (or intend to file) a timely appeal from the decision or order sought to be stayed. Portland General Electric Co. (Trojan Nuclear Plant), ALAB-524, 9 NRC 65, 68-69 (1979).

5.7.2 Stays Pending Remand After Judicial Review

Where a litigant who has prevailed upon a judicial appeal of an NRC decision seeks a suspension of the effectiveness of the NRC decision pending remand, such a suspension is not controlled by the Virginia Petroleum Jobbers criteria but, instead, is dependent upon a balancing of all relevant equitable considerations. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-458, 7 NRC 155, 159-60 (1978). In such circumstances, the negative impact of the court's decision places a heavy burden of proof on those opposing the stay. Id. at 7 NRC 160.

5.8 Specific Appealable Matters

5.8.1 Rulings on Intervention

NRC regulations contain a special provision (10 CFR § 2.714a) allowing an interlocutory appeal from a Licensing Board order on a petition for leave to intervene. Under 10 CFR § 2.714a(b), a petitioner may appeal such an order but only if the effect thereof is to deny the petition in its entirety -- i.e., to refuse petitioner entry into the case. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-586, 11 NRC 472,

473 (1980); Puget Sound Power and Light Co. (Skagit/Hanford Nuclear Power Project, Units 1 and 2), ALAB-683, 16 NRC 160 (1982), citing, Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), ALAB-599, 12 NRC 1, 2 (1980). Only the petitioner denied leave to intervene can take an appeal of such an order. The Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-709, 17 NRC 17, 22 n.7 (1983), citing, 10 CFR § 2.714a(b). Petitioner may not appeal an order admitting him as an intervenor but denying certain of his contentions. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-329, 3 NRC 607 (1976); Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-302, 2 NRC 856 (1975); Puerto Rico Water Resources Authority (North Coast Nuclear Plant, Unit 1), ALAB-286, 2 NRC 213 (1975); Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), ALAB-273, 1 NRC 492, 494 (1975); Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), ALAB-269, 1 NRC 411 (1975). Appellate review of a ruling rejecting some but not all of a petitioner's contentions is available only at the end of the case. Northern States Power Co. (Tyrone Energy Parks, Unit 1), ALAB-492, 8 NRC 251, 252 (1978). Similarly, where a proceeding is divided into two segments for convenience purposes and a petitioner is barred from participation in one segment but not the other, that is not such a denial of participation as will allow an interlocutory appeal under 10 CFR § 2.714a. River Bend Station, supra, 3 NRC 607.

A State participating as an "interested State" under 10 CFR § 2.715(c) may appeal an order barring such participation, but it may not seek review of an order which permits the State to participate but excludes an issue which it seeks to raise. River Bend Station, supra.

Only the petitioner may appeal from an order denying it leave to intervene. USERDA (Clinch River Breeder Reactor Plant), ALAB-345, 4 NRC 212 (1976). Other parties may file briefs in support of or opposition to the appeal. Id. The Applicant, the NRC Staff or any other party may appeal an order granting a petition to intervene or request for a hearing in whole or in part, but only on the grounds that the petition or request should have been denied in whole. 10 CFR § 2.714(c).

A Licensing Board's failure, after a reasonable length of time, to rule on a petition to intervene is tantamount to a denial of the petition. Where the failure of the Licensing Board to act is both unjustified and prejudicial, the petitioner may seek interlocutory review of the Licensing Board's delay under 10 CFR § 2.714a. Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB-376, 5 NRC 426 (1977).

Pursuant to 10 CFR § 2.714a, an appeal concerning an intervention petition must await the ultimate grant or denial of that petition. Detroit Edison Company (Greenwood Energy Center, Units 2 & 3), ALAB-472, 7 NRC 570, 571 (1978). The action of a Licensing Board in provisionally ordering a hearing and in preliminarily ruling on petitions for leave to intervene is not appealable under 10 CFR § 2.714a in a situation where the Board cannot rule on contentions and the need for an evidentiary hearing until after the special prehearing conference required under 10 CFR § 2.751a and where the petitioners denied intervention may qualify on refiling. Consumers Power Co. (Midland Plant, Units 1 & 2), LBP-78-27, 8 NRC 275, 280 (1978). Similarly, a Licensing Board order which determines that petitioner has met the "interest" requirement for intervention and that mitigating factors outweigh the untimeliness of the petition but does not rule on whether petitioner has met the "contentions" requirement is not a final disposition of the petition seeking leave to intervene. Detroit Edison Company (Greenwood Energy Center, Units 2 & 3), ALAB-472, 7 NRC 570, 571 (1978).

10 CFR § 2.714a does not authorize an appellant to file a brief in reply to parties' briefs in opposition to the appeal. Rather, leave to file a reply brief must be obtained. Nuclear Engineering Co. (Sheffield, Ill. Low-Level Waste Disposal Site), ALAB-473, 7 NRC 737, at 745, n.9 (1978).

While the regulations do not explicitly provide for Commission review of decisions on intervention, the Commission has entertained appeals in this regard and review by the Commission apparently may be sought. Florida Power & Light Co. (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939 (1978).

Under settled practice, Appeal Boards do not on their own initiative review Licensing Board orders granting or denying intervention. If those affected do not deem themselves sufficiently aggrieved to appeal, there is no reason for Appeal Boards to concern themselves. Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-571, 10 NRC 687, 688 (1979).

5.8.2 Scheduling Orders

Since scheduling is a matter of Licensing Board discretion, the Appeal Boards generally will not interfere with scheduling decisions absent a "truly exceptional situation." Virginia Electric & Power Co. (North Anna Power Station, Unit 1 & 2), ALAB-584, 11 NRC 451, 467 (1980); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-295, 2 NRC 668 (1975); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-293, 2 NRC 660

(1975); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 250 (1974). See also Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-344, 4 NRC 207, 209 (1976) (Appeal Board is reluctant to overturn or otherwise interfere with scheduling orders of Licensing Boards absent due process problems); and Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-637, 13 NRC 367 (1981) (Appeal Board is loath to interfere with a Licensing Board's denial of a request to delay a proceeding where the Commission has ordered an expedited hearing; in such a case there must be a "compelling demonstration of a denial of due process or the threat of immediate and serious irreparable harm" to invoke discretionary review).

Although, absent special circumstances, the Appeal Board will generally review Licensing Board scheduling determinations only where confronted with a claim of deprivation of due process, the Appeal Board may, on occasion, review a Licensing Board scheduling matter when that scheduling appears to be based on the Licensing Board's misapprehension of an Appeal Board directive. See, e.g., Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-468, 7 NRC 464, 468 (1978).

Matters of scheduling rest peculiarly within the Licensing Board's discretion; the Appeal Board is reluctant to review scheduling orders, particularly when asked to do so on an interlocutory basis. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-541, 9 NRC 436, 438 (1979).

5.8.3 Discovery Rulings

5.8.3.1 Rulings on Discovery Against Nonparties

An order granting discovery against a nonparty is final and appealable by that nonparty as of right. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-122, 6 AEC 322 (1973). An order denying such discovery is wholly interlocutory and an immediate appeal by the party seeking discovery is excluded by 10 CFR § 2.730(f). Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-116, 6 AEC 258 (1973); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-780, 20 NRC 378, 380-81 (1984).

5.8.3.2 Rulings Curtailing Discovery

In appropriate instances, an order curtailing discovery is appealable. To establish reversible error from curtailment of discovery procedures, a party must demonstrate that the action made it impossible to obtain crucial evidence, and implicit in such a showing is proof that more

diligent discovery is impossible. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-303, 2 NRC 858, 869 (1975). Absent such circumstances, however, an order denying discovery, and discovery orders in general are not immediately appealable since they are interlocutory. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-639, 13 NRC 469, 472 (1981); Public Service Co. of Oklahoma (Black Fox Station, Units 1 & 2), ALAB-370, 5 NRC 131 (1977).

5.8.4 Refusal to Compel Joinder of Parties

A Licensing Board's refusal to compel joinder of certain persons as parties to a proceeding is interlocutory in nature and, pursuant to 10 CFR § 2.730(f), is not immediately appealable. Public Service Co. of Oklahoma (Black Fox Station, Units 1 & 2), ALAB-370, 5 NRC 131 (1977).

5.8.4.1 Order Consolidating Parties

Just as an order denying consolidation is interlocutory, an order consolidating the participation of one party with others may not be appealed prior to the conclusion of the proceeding. Portland General Electric Company (Trojan Nuclear Plant), ALAB-496, 8 NRC 308, 309-310 (1978); Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-339, 4 NRC 20, 23 (1976).

5.8.5 Order Denying Summary Disposition

As is the case under Rule 56 of the Federal Rules of Civil Procedure, an order denying a motion for summary disposition under 10 CFR § 2.749 is not immediately appealable. Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1&2), ALAB-641, 13 NRC 550 (1981); Louisiana Power & Light Co. (Waterford Steam Electric Generating Station, Unit 3), ALAB-220, 8 AEC 93 (1974). Similarly, a deferral of action on, or denial of, a motion for summary disposition does not fall within the bounds of the 10 CFR § 2.714a exception to the prohibition on interlocutory appeals, and may not be appealed. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit No. 1), ALAB-400, 5 NRC 1175 (1977). (See also 3.5).

5.8.6 Procedural Irregularities

Absent extraordinary circumstances, an Appeal Board will not consider alleged procedural irregularities unless an appeal has been taken by a party whose rights may have been substantially affected by such irregularities. Boston Edison Co. (Pilgrim Nuclear Power Station, Unit 1), ALAB-231, 8 AEC 633, 634 (1974).

5.8.7 Matters of Recurring Importance

There is some indication that a matter of recurring procedural importance may be appealed in a particular case even though it may no longer be determinative in that case. However, if it is of insufficient general importance (for instance, whether existing guidelines concerning cross-examination were properly applied in an individual case), the Appeal Board will refuse to hear the appeal. Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-461, 7 NRC 313, 316 (1978).

5.8.8 Advisory Decisions on Trial Rulings

Advisory decisions on trial rulings which resulted in no discernible injury ordinarily will not be considered on appeal. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-157, 6 AEC 858 (1973).

5.8.9 Order on Pre-LWA Activities

A Licensing Board order on the issue of whether offsite activity can be undertaken prior to the issuance of an LWA or a construction permit is immediately appealable as of right. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-331, 3 NRC 771, 774 (1976).

5.8.10 Partial Initial Decisions

Partial initial decisions which do not yet authorize construction activities still may be significant and, therefore, immediately appealable as of right. Duke Power Co. (Perkins Nuclear Station, Unit 1, 2, & 3), ALAB-597, 11 NRC 870, 871 (1980); Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Units 1 & 2), ALAB-301, 2 NRC 853, 854 (1975).

Although 10 CFR § 2.762(a), the sole provision in the Rules of Practice allowing appeals to the Appeal Board, refers only to "initial decisions," a "partial initial decision" with regard to activities prior to the issuance of an LWA is an "initial decision" within the meaning of 10 CFR § 2.762(a), at least where the partial initial decision amounts to a final decision on the merits of the applicant's request for permission to do work prior to issuance of an LWA. Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-331, 3 NRC 771 (1976).

For the purposes of appeal, partial initial decisions which decide a major segment of a case or terminates a party's right to participate, are final Licensing Board actions on the issues decided. Philadelphia Electric Co.

(Limerick Generating Station, Units 1 and 2), LBP-83-25, 17 NRC 681, 684 (1983). See Boston Edison Co. (Pilgrim Nuclear Power Station, Unit 2), ALAB-632, 13 NRC 91, 93 n.2 (1981).

5.8.11 Other Licensing Actions

When a Licensing Board, during the course of an operating license hearing, grants a Part 70 license to transport and store fuel assemblies, the decision is not interlocutory and is immediately appealable as of right. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-76-1, 3 NRC 73, 74 (1976).

When a Licensing Board's ruling removes any possible adjudicatory impediments to the issuance of a Part 70 license, the ruling is immediately appealable. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-778, 20 NRC 42, 45 n.1 (1984), citing, Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-765, 19 NRC 645, 648 n.1 (1984).

5.8.12 Rulings on Civil Penalties

In a civil penalty case, an order by the Administrative Law Judge affirming the Director of Inspection and Enforcement's order imposing civil penalties on a licensee, but at the same time granting a request for a hearing to present facts to support mitigation of the amount of the penalty, is not appealable under 10 CFR § 2.762 because it is premature. An appeal at this point is foreclosed by 10 CFR § 2.730(f). Section 2.730(f) is a rule of general applicability governing civil penalty proceedings to the same extent as it does licensing proceedings. Pittsburgh-Des Moines Steel Co., ALAB-441, 6 NRC 725 (1977).

5.8.13 Evidentiary Rulings

While all evidentiary rulings are ultimately subject to appeal at the end of the proceeding, not all such rulings are worthy of appeal. Some procedural and evidentiary errors almost invariably occur in lengthy hearings where the presiding officer must rule quickly. Only serious errors affecting substantial rights and which might have influenced improperly the outcome of the hearing merit the hearing merit exception and briefing on appeal. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-204, 7 AEC 835, 836 (1974).

Evidentiary exclusions must affect a substantial right, and the substance of the evidence must be made known by way of an offer of proof or be otherwise apparent, before

the exclusions can be considered errors. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-673, 15 NRC 688, 697-98 at n.14 (1982).

For a discussion of the procedure necessary to preserve evidentiary rulings for appeal, see Section 3.11.4.

5.8.14 Director's Decision on Show Cause Petition

The Appeal Board normally lacks jurisdiction to entertain motions seeking review only of actions of the Director of Nuclear Reactor Regulation; the Commission itself is the forum for such review. See 10 CFR § 2.206(c). Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-466, 7 NRC 457 (1978).

5.8.15 Findings of Fact

There is no right to an administrative appeal on every factual finding. Tennessee Valley Authority (Hartsville Nuclear Plants, Units 1A, 2A, 1B & 2B), ALAB-467, 7 NRC 459, 461 at n.5 (1978).

5.9 Perfecting Appeals

Normally, Appeal Boards will not review or pass upon specific rulings (e.g., rulings with respect to contentions) in the absence of a properly perfected appeal by the injured party. Washington Public Power Supply System (Nuclear Projects No. 1 & No. 4), ALAB-265, 1 NRC 374 at n. 1 (1975); Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-242, 8 AEC 847, 848-849 (1974). An appeal is perfected by the filing of a notice of appeal with respect to the order or ruling as to which an appeal is sought.

While the Commission does not require the same precision in the filings of laymen that is demanded of lawyers, any party wishing to challenge some particular Licensing Board action must at least identify the order in question, indicate that he is appealing from it, and give some reason why he thinks it's erroneous. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-469, 7 NRC 470, 471 (1978).

5.9.1 General Requirements for Appeals from Initial Decision

The general requirements for an appeal from an initial decision are set out in 10 CFR § 2.762. Section § 2.762(a) provides that such appeal is to be filed within ten days after service of the initial decision. A brief in support of the appeal is to be filed within 30 days (40 days in the case of the Staff). 10 CFR § 2.762(a).

5.10 Briefs on Appeal

5.10.1 Necessity of Brief

In any appeal, the filing of a brief in support of the appeal is mandatory. The appellant's failure to file such a brief will result in dismissal of the entire appeal, and this rule applies even if the appellant is acting pro se. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-140, 6 AEC 575 (1973). Under prior practice where an appeal was taken by the filing of exceptions, all exceptions were to be briefed and exceptions not briefed normally were disregarded by the Appeal Board in its consideration of the appeal. Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43 (1981); Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-461, 7 NRC 313, 315 (1978); Florida Power & Light Co. (St. Lucie Nuclear Plant Unit 2), ALAB-435, 6 NRC 541 (1977); Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-367, 5 NRC 92 (1977); Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), ALAB-359, 4 NRC 619, 621 at n.1 (1976); Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-355, 3 NRC 830, 832 at n.3 (1976); Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-270, 1 NRC 473 (1975); Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 382-383 (1974); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-207, 7 AEC 957 (1974); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1083 n.2 (1983); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-781, 20 NRC 819, 824 n.4 (1984).

Intervenors have a responsibility to structure their participation so that it is meaningful and alerts the agency to the intervenors' position and contentions. Salem, supra, 14 NRC at 50, citing, Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 553 (1978). Even parties who participate in NRC licensing proceedings pro se have an obligation to familiarize themselves with proper briefing format and with the Commission's Rules of Practice. Salem, supra, 14 NRC at 50, n.7.

5.10.2 Time for Submittal of Brief

10 CFR § 2.762 provides that briefs supporting an appeal must be filed within 30 days (40 days for the Staff) after filing the notice of appeal.

The time limits imposed in 10 CFR § 2.762(a) for filing briefs refer to the date upon which the appeal was actually filed and not to when the appeal was originally due to be filed prior to a time extension. Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 125 (1977).

It is not necessary for a party to bring to the Appeal Board's attention the fact that its adversary has not met prescribed time limits. Nor as a general rule will any useful purpose be served by filing a motion seeking to have an appeal dismissed because the appellant's brief was a few days late; the mailing of a brief on a Sunday or Monday which was due for filing the prior Friday does not constitute substantial noncompliance within the meaning of 10 CFR § 2.762(e)[now § 2.762(f)], which would warrant dismissal, absent unique circumstances. Wolf Creek, supra.

If unable to meet the deadline for filing a brief in support of its appeal of a Licensing Board's decision, a party is duty-bound to seek an extension of time sufficiently in advance of the deadline to enable an Appeal Board to act seasonably upon the application. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-568, 10 NRC 554, 555 (1979).

In the event of some late arising unforeseen development, a party may tender a document belatedly. As a rule, such a filing must be accompanied by a motion for leave to file out-of-time which satisfactorily explains not only the reasons for the lateness, but also why a motion for a time extension could not have been seasonably submitted, irrespective of the extent of the lateness. Wolf Creek, ALAB-424 supra. Apparently, however, the written explanation for the tardiness may be waived by the Appeal Board if, at a later date, the Board and parties are provided with an explanation which the Board finds to be satisfactory. Id. at 126.

5.10.2.1 Time Extensions for Brief

Motions to extend the time for briefing are not favored. In any event, such motions should be filed in such a manner as to reach the Appeal Board at least one day before the period sought to be extended expires. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-117, 6 AEC 261 (1973); Boston Edison Co. (Pilgrim Nuclear Station), ALAB-74, 5 AEC 308 (1972). An extension of briefing time which results in the rescheduling of an already calendared oral argument will not be granted absent extraordinary circumstances. Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), ALAB-144, 6 AEC 628 (1973).

5.10.2.2 Supplementary Briefs

A supplementary brief will not be accepted unless requested by the Appeal Board or accompanied by a motion for leave to file which sets forth reasons for the out-of-time filing. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-115, 6 AEC 257 (1973).

Material tendered by a party without leave of the Appeal Board, after oral argument has been held and an appeal has been submitted for decision, constitutes improper supplemental argument. Consumers Power Co. (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312, 321-22 (1981).

5.10.3 Contents of Brief

The general requirements for the form of the brief in support of an appeal are set forth in 10 CFR § 2.762. Any brief which in form or content is not in substantial compliance with these requirements may be stricken either on motion of a party or on the Commission's own motion. 10 CFR § 2.762(g). For example, an appendix to a reply brief containing a lengthy legal argument will be stricken when the appendix is simply an attempt to exceed the page limitations set by the Appeal Board. Toledo Edison Co. and Cleveland Electric Illuminating Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3; Perry Nuclear Power Plant, Units 1 and 2), ALAB-430, 6 NRC 457 (1977).

Although the Commission's Rules of Practice do not specifically require that a brief include a statement of the facts of the case, those facts relevant to the appeal should be set forth. An Appeal Board has indicated that it would dismiss an appeal if the failure to include a statement of facts were not corrected. Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-388, 5 NRC 640 (1977). The statement of facts set forth in the brief on appeal should include an exposition of that portion of the procedural history of the case related to the issue or issues presented by the appeal. Public Service Electric and Gas Company (Hope Creek Generating Station, Units 1 and 2), ALAB-394, 5 NRC 769, 771 n.2 (1977).

The brief must contain sufficient information and argument to allow the appellate tribunal to make an intelligent disposition of the issue raised on appeal. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397 (1976). A brief which does not contain such information is tantamount to an abandonment of the issue. Id.; Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-270, 1 NRC 473 (1975); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 381 n.88 (1985); Cleveland Electric Illuminating Co. (Perry

Nuclear Power Plant, Units 1 and 2), ALAB-802, 21 NRC 490, 496 n.30 (1985). See also Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-793, 20 NRC 1591, 1619 (1984). At a minimum, briefs must identify the particular error addressed and the precise portions of the record relied upon in support of the assertion of error. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-739, 18 NRC 335, 338 n.4 (1983), citing, 10 CFR § 2.762(a); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1255 (1982) and Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 49-50 (1981), aff'd sub nom., Township of Lower Alloways Creek v. Public Service Electric and Gas Co., 687 F.2d 732 (3d Cir. 1982).

10 CFR § 2.762 requires that a brief clearly identify the errors of fact or law that are the subject of the appeal and specify the precise portion of the record relied on in support of the assertion of error. Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43 (1981). Claims of error that are without substance or are inadequately briefed will not be considered on appeal. Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 481 (1982), citing, Salem, supra, 14 NRC at 49-50. Bald allegations made on appeal of supposedly erroneous Licensing Board evidentiary rulings may be properly dismissed for inadequate briefing. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 378 (1985). See 10 CFR § 2.762(d).

An appeal may be dismissed when inadequate briefs make its arguments impossible to resolve. Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-693, 16 NRC 952, 956 (1982), citing, Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 787 (1979); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 413 (1976).

A brief that merely indicates reliance on previously filed proposed findings, without meaningful argument addressing the Licensing Board's disposition of issues, is of little value in appellate review. Union Electric Co. (Calloway Plant, Unit 1), ALAB-740, 18 NRC 343, 348 n.7 (1983), citing, Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 50 (1981), aff'd sub nom. Township of Lower Alloways Creek v. Public Service Electric and Gas Co., 687 F.2d 732 (3d Cir. 1982).

Lay representatives generally are not held to the same standard for appellate briefs that is expected of lawyers. Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-693, 16 NRC 952, 956 (1982), citing, Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 50 n.7 (1981). Nonetheless, NRC litigants appearing pro se or through lay representatives are in no way relieved by that status of any obligation to familiarize themselves with the Commission's rules. To the contrary, all individuals and organizations electing to become parties to NRC licensing proceedings can fairly be expected both to obtain access to a copy of the rules and refer to it as the occasion arises. Susquehanna, supra, 16 NRC at 956, citing Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-563, 10 NRC 449, 450 n.1 (1979).

A party's brief must (1) specify the precise portion of the record relied upon in support of the assertion of error, and (2) relate to matters raised in the party's proposed findings of fact and conclusions of law. An Appeal Board will not ordinarily entertain arguments raised for the first time on appeal, absent a serious, substantive issue. Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-693, 16 NRC 952, 955-56, 956 n.6, citing, Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 49 (1981); Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-463, 7 NRC 341, 348 (1978); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 906-907 (1982).

All factual assertions in the brief must be supported by references to specific portions of the record. Consolidated Edison Co. of N.Y. (Indian Point Station, Unit 2), ALAB-159, 6 AEC 1001 (1973). All references to the record should appear in the appellate brief itself; it is inappropriate to incorporate into the brief by reference a document purporting to furnish the requisite citations. Kansas Gas & Electric Company (Wolf Creek Generating Plant Unit 1), ALAB-424, 6 NRC 122, 127 (1977). Incorporation by reference in the brief of exceptions without any supporting record references or other authority violates both the letter and spirit of 10 CFR § 2.762. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-367, 5 NRC 92 (1977). A letter incorporating by reference a brief and proposed findings and conclusions filed with the Licensing Board does not satisfy the requirements for a brief on exceptions. Public Service Electric and Gas Company (Hope Creek Generating Station, Units 1 and 2), ALAB-394, 5 NRC 769 (1977).

Documents appended to an appellate brief will be stricken where they constitute an unauthorized attempt to supplement the record. However, if the documents were newly discovered evidence and tended to show that significant testimony in the record was false, the Appeal Board might be sympathetic to a motion to reopen the hearing. Toledo Edison Co. and Cleveland Electric Illuminating Co. (Davis-Besse Nuclear Power Station, Units 1, 2 & 3); (Perry Nuclear Power Plant, Units 1 & 2), ALAB-430, 6 NRC 451 (1977).

Personal attacks on opposing counsel are not to be made in appellate briefs, Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-204, 7 AEC 835, 837-838 (1974), and briefs which carry out personal attacks in an abrasive manner upon Licensing Board members will be stricken. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-121, 6 AEC 319 (1973).

10 CFR § 2.762 has been amended to set a 70-page limit on appellate briefs. 10 CFR § 2.762(e). Established page limitations may not be exceeded without leave and may not be circumvented by use of "appendices" to the brief, Toledo Edison Co. and Cleveland Electric Illuminating Co. (Davis-Besse Nuclear Power Station, Units 1, 2 & 3), ALAB-430, 6 NRC 457 (1977), although Section 2.762(e) does permit a request for enlargement of the page limitation on a showing of good cause filed at least seven days before the date on which the brief is due. Briefs longer than 10 pages must contain a table of contents with page references and a table of authorities with page references to citations of authority. 10 CFR § 2.762(d). The appellant's brief must contain a statement of the case with applicable procedural history. Public Service Electric & Gas Co. (Hope Creek Generating Station, Units 1 & 2), ALAB-394, 5 NRC 769 (1977); Public Service Co. of Oklahoma (Black Fox Station, Units 1 & 2), ALAB-388, 5 NRC 640 (1977).

A permitted reply to an answer should only reply to opposing briefs and not raise new matters. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 243, n.4 (1980).

5.10.3.1 Opposing Briefs

Briefs in opposition to the appeal should concentrate on the appellant's brief, not on the exceptions which had been filed. See Illinois Power Co. (Clinton Power Station, Units 1 & 2), ALAB-340, 4 NRC 27, 52 at n.39 (1976).

Reply briefs are due within 30 days of filing and service of the appellant's brief, or, in the case of the Staff, within 40 days. 10 CFR § 2.762(c). If service of appellant's brief is made by mail, add 5 days to these time periods. 10 CFR § 2.710.

5.10.4 Amicus Curiae Briefs

10 CFR § 2.715 has been amended to allow a nonparty to file a brief amicus curiae with regard to matters before the Appeal Board or the Commission. The nonparty must submit a motion seeking leave to file the brief, and acceptance of the brief is a matter of discretion with the Appeal Board or Commission. 10 CFR § 2.715(d).

5.11 Oral Argument

If not requested by a party, oral arguments are scheduled by an Appeal Board when one or more members of the Board have questions of the parties. See 10 CFR § 2.763; Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-666, 15 NRC 277, 279 (1982). All parties are expected to be present or represented at oral argument unless specifically excused by the Board. Such attendance is one of the responsibilities of all parties when they participate in Commission adjudicatory proceedings. Point Beach, 15 NRC at 279.

5.11.1 Failure to Appear for Oral Argument

If for sufficient reason a party cannot attend an oral argument, it should request that the appeal be submitted on briefs. Any such request, however, must be adequately supported. A bare declaration of inadequate financial resources is clearly deficient. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-666, 15 NRC 277, 279 (1982).

Failure to advise the Appeal Board of an intent not to appear at oral argument already calendared is discourteous and unprofessional and may result in dismissal of the appeal. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-337, 4 NRC 7 (1976).

5.11.2 Grounds for Postponement of Oral Argument

Postponement of an already calendared oral argument for conflict reasons will be granted only upon a motion setting out:

- (1) the date the conflict developed;
- (2) the efforts made to resolve it;
- (3) the availability of alternate counsel;
- (4) public and private interest considerations;
- (5) the positions of the other parties;

(6) the proposed alternate date.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-165, 6 AEC 1145 (1973).

A party's inadequate resources to attend oral argument, properly substantiated, may justify dispensing with oral argument. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-666, 15 NRC 277, 279 (1982).

5.11.3 Oral Argument by Nonparties

Under 10 CFR § 2.715(d), a person who is not a party to a proceeding may be permitted to present oral argument to the Appeal Board or the Commission. A motion to participate in the oral argument must be filed and non-party participation is at the discretion of the Appeal Board or the Commission.

5.12 Actions Similar to Appeals

5.12.1 Motions to Reconsider

Licensing Boards have the inherent power to entertain and grant a motion to reconsider an initial decision. Consolidated Edison Co. of N.Y. (Indian Point Station, Unit 3), ALAB-281, 2 NRC 6 (1975).

Similarly, Appeal Boards will entertain a petition for reconsideration. When such a petition is filed, no other party need respond absent a request by the Appeal Board to do so. Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), ALAB-166, 6 AEC 1148, 1150 at n.7 (1973). The practice followed by the Appeal Board, that it is unnecessary for a party to respond to a motion for reconsideration unless specifically requested to do so by the Board, is also applicable to requests for clarification of a prior decision. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-544, 9 NRC 630, 631 (1979).

The Appeal Board has indicated that a motion to it to reconsider a prior decision will be denied where the Appeal Board is left with the conviction that what confronts it is not in reality an elaboration upon, or refinement of, arguments previously advanced, but instead, is an entirely new thesis. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-418, 6 NRC 1, 2 (1977).

Motions to reconsider an order must be grounded upon a concrete showing, through appropriate affidavits rather than counsel's rhetoric, of potential harm to the inspection and investigation functions relevant to a case. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-735, 18 NRC 19, 25-26 (1983).

Motions for reconsideration are for the purpose of pointing out an error the Board has made. Unless the Board has relied on an unexpected ground, new factual evidence and new arguments are not relevant in such a motion. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-84-10, 19 NRC 509, 517-18 (1984).

The Commission's refusal to hear a discretionary appeal does not cut off the Appeal Board's right to reconsider a question in an appeal which is still pending before the Appeal Board. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 260 (1978).

Where a party petitioning the Court of Appeals for review of a decision of the agency also petitions the agency to reconsider its decision, and the Federal court stays its review pending the agency's disposition of the motion to reconsider; the Hobbs Act does not preclude the agency's reconsideration of the case. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 259 (1978).

An Appeal Board may not reconsider a matter after it has lost jurisdiction. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-579, 11 NRC 223, 225-226 (1980).

5.12.2 Interlocutory Reviews

With the exception of an appeal from a total denial of a petition to intervene (10 CFR § 2.714a), there is no right to appeal any interlocutory ruling by a Licensing Board to an Appeal Board. 10 CFR § 2.730(f); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-21, 17 NRC 593, 597 (1983).

Thus, for example, a Licensing Board's rulings limiting contentions or discovery or requiring consolidation are not immediately appealable, though such rulings may be reviewed later by deferring appeals on them until the end of the case. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-339, 4 NRC 20 (1976). In the same vein see Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-637,

13 NRC 367 (1981). See also Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-768, 19 NRC 988, 992 (1984). Similarly, interlocutory appeals from Licensing Board rulings made during the course of a proceeding, such as the denial of a motion to dismiss the proceeding, are forbidden. Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-433, 6 NRC 469 (1977).

The fact that legal error may have occurred does not of itself justify interlocutory appellate review in the teeth of the longstanding articulated Commission policy generally disfavoring such review. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-734, 18 NRC 11, 15 (1983). See 10 CFR § 2.730(f).

The prohibition against interlocutory appeals set forth in 10 CFR § 2.730(f) is a rule of general applicability. It applies to an interlocutory ruling of the Administrative Law Judge with respect to civil penalties just as it applies to rulings in licensing proceedings. Pittsburgh-Des Moines Steel Co., ALAB-441, 6 NRC 725 (1977).

It applies as well to an intervenor's "appeal" of a Licensing Board order rescinding any earlier orders or issuances granting procedural assistance to intervenors, following the suspension of the operation of 10 CFR § 2.750(c) upon which the assistance program was based. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-625, 13 NRC 13 (1981).

It is not the Appeal Board's role to monitor the numerous interlocutory rulings made by Licensing Boards. Thus, interlocutory appeals of such rulings rarely will be entertained. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-504, 8 NRC 406, 410 (1978).

Although interlocutory appeals are generally not permitted as a matter of right under the Rules of Practice, 10 CFR § 2.730(f), the Appeal Board may, as a matter of discretion, elect to entertain matters normally subject to appellate review at the end of a case when (and if) an appeal is taken from the Licensing Board's final decision, 10 CFR § 2.718(i) and § 2.785(b)(1). Discretionary review is granted only sparingly and only when a Licensing Board's action either (a) threatens the party adversely affected with immediate and serious irreparable harm that could not be remedied by a later appeal or (b) affects the basic structure of the proceeding in a pervasive or unusual manner. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-663, 14 NRC 1140 (1981); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-635, 13 NRC 309, 310 (1981); Pennsylvania Power & Light Company and Allegheny Electric

Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 & 2), ALAB-593, 11 NRC 761 (1980); United States Department of Energy, Project Management Corp, Tennessee Valley Authority (Clinch River Breeder Reactor Plant), ALAB-688, 16 NRC 471, 474, 475 (1982), citing, Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-588, 11 NRC 533, 536 (1980); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-737, 18 NRC 168, 171 (1983). Interlocutory appellate review of Licensing Board orders is disfavored and will be undertaken as a discretionary matter only in the most compelling circumstances. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 and 3), ALAB-742, 18 NRC 380, 383 n.7 (1983), citing, Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478, 483-86 (1975).

Although generally precluding interlocutory appeals, 10 CFR § 2.730(f), does allow a Licensing Board to refer a ruling to an Appeal Board. The Appeal Board need not, however, accept the referral. In deciding whether to do so, the Appeal Board applies essentially the same test as it utilizes in acting upon directed certification requests filed under 10 CFR § 2.718(i). Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-741, 18 NRC 371, 375 n.6 (1983).

The Commission's 1981 Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 456, does not call for a marked relaxation of the standard that the discretionary review of interlocutory Licensing Board rulings authorized by 10 CFR §§ 2.730(f) and 2.718(i) should be undertaken only in the most compelling circumstances. Rather, it simply exhorts the Licensing Boards to put before the Appeal Board legal or policy questions that, in their judgment, are "significant" and require prompt appellate resolution. Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-741, 18 NRC 371, 375 (1983); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-791, 20 NRC 1579, 1583 (1984). The language regarding directed certification in § V(f)(4) of Appendix A to the Rules of Practice, like the Commission's Policy Statement, does not relax the standards for directed certification. Id. at 1583-84. The fact that an evidentiary ruling involves a matter that may be novel or important does not alter the strict standards for directed certification. Id. at 1583.

The fact that the error of a Licensing Board may lead to delay and increased expense is not a controlling consideration in favor of interlocutory review. Virginia Electric Power Co. (North Anna Power Station, Units 1 and 2),

ALAB-741, 18 NRC 371, 378 n.11 (1983), citing, Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-675, 15 NRC 1105, 1113-14 (1982).

In the absence of a potential for truly exceptional delay or expense, the risk that a Licensing Board's interlocutory ruling may eventually be found to have been erroneous, and that because of the error further proceedings may have to be held, is one which must be assumed by that board and the parties to the proceeding. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-768, 19 NRC 988, 992 (1984), citing, Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-116, 6 AEC 258, 259 (1973); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-805, 21 NRC 596, 600 (1985).

A Licensing Board's decision to admit a contention which will require the Staff to perform further statutory required review does not result in unusual delay or expense which justifies referral of the Board's decision for interlocutory review. Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility), LBP-85-3, 21 NRC 244, 257-258 n.19 (1985), citing, Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 464 (1982), rev'd in part on other grounds, CLI-83-19, 17 NRC 1041 (1983).

A Licensing Board's action is final for appellate purposes where it either disposes of at least a major segment of the case or terminates a party's right to participate. Rulings which do neither are interlocutory. Interlocutory determinations may not be brought before the Appeal Board as a matter of right until the Board below has rendered a reviewable decision. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-731, 17 NRC 1073, 1074-75 (1983); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-787, 20 NRC 1097, 1100 (1984).

5.12.2.1 Directed Certification of Questions for Interlocutory Review

The Commission's rules do not allow the Appeal Board to entertain interlocutory appeals, 10 CFR § 2.730(f). In extraordinary circumstances, however, the Appeal Board can review interlocutory rulings by a petition for directed certification pursuant to 10 CFR § 2.718(i). Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-541, 9 NRC 436, 437 (1979); Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-82-62, 16 NRC 565, 567 (1982), citing, Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-382, 5 NRC 603, 606 (1977).

Despite the general prohibition against interlocutory review, the regulations provide that a party may ask a Licensing Board to certify a question to the Appeal Board without ruling on it. 10 CFR § 2.718(i). The regulations also allow a party to request that a Licensing Board refer a ruling on a motion to the Appeal Board under 10 CFR § 2.730(f). The Appeal Board has construed Section 2.718 as giving any party the right to seek interlocutory review by filing a petition for "directed certification" to the Appeal Board. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-271, 1 NRC 478, 482-483 (1973).

A party seeking certification under Section 2.718(i) must, at a minimum, establish that a referral under 10 CFR § 2.730(f) would have been proper -- i.e., that a failure to resolve the problem will cause the public interest to suffer or will result in unusual delay and expense. Puerto Rico Water Resources Authority (North Coast Nuclear Plant, Unit 1), ALAB-361, 4 NRC 625 (1976); Toledo Edison Co. (Davis Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 759 (1975); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-271, 1 NRC 478, 483 (1975); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LPB-82-106, 16 NRC 1649, 1652-53 (1982). However, the added delay and expense occasioned by the admission of a contention -- even if erroneous -- does not alone distinguish the case so as to warrant interlocutory review. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-675, 15 NRC 1105, 1114 (1982). The fact that applicants will be unable to recoup the time and financial expense needed to litigate late-filed contentions is a factor that is present when any contention is admitted and thus does not provide the type of unusual delay that warrants interlocutory Appeal Board review. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-706, 16 NRC 1754, 1758 n.7 (1982), citing Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-675, 15 NRC 1105, 1114 (1982).

Discretionary interlocutory review will be granted by the Appeal Board only when the ruling below either (1) threatened the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated by a later appeal, or (2) affected the basic structure of the proceeding in a pervasive or unusual manner. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-635, 13 NRC 309, 310 (1981); Public Service Electric and Gas Company (Salem Nuclear Generating Station, Unit 1), ALAB-588, 11 NRC 533, 536 (1980); Public Service Company of Indiana (Marble Hill Nuclear Generating Station,

Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977); Perry, supra, 15 NRC at 1110; Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-82-62, 16 NRC 565, 568 (1982), citing, Marble Hill, supra, 5 NRC at 1192; Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-706, 16 NRC 1754, 1756 (1982); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-762, 19 NRC 565, 568 (1984); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-791, 20 NRC 1579, 1582 (1984); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-805, 21 NRC 596, 599 n.12 (1985). A ruling that does no more than admit a contention has a low potential for meeting that standard. Perry, supra, 16 NRC at 1756, citing, Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 464 (1982).

Whether review should be undertaken on "certification" or by referral before the end of the case turns on whether failure to address the issue would seriously harm the public interest, result in unusual delay or expense, or affect the basic structure of the proceeding in some pervasive or unusual manner. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 464 (1982), citing, Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-634, 13 NRC 96 (1981).

The fact that an interlocutory Licensing Board ruling may be wrong does not per se justify directed certification. Virginia Electric and Power Co. (North Anna Power station, Units 1 and 2), ALAB-741, 18 NRC 371, 374 (1983), citing, Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-734, 18 NRC 11, 14 n.4 (1983).

Some cases have delineated, to a certain extent, the requirements for directed certification as to specific issues and under particular circumstances. In this vein:

- (1) Directed certification will not be granted unless the Licensing Board below had a reasonable opportunity to consider the question as to which certification is sought. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-297, 2 NRC 727, 729 (1975). See also Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-330, 3 NRC 613, 618-619, rev'd in part sub nom., USERDA (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67 (1976).
- (2) While it may not always be dispositive, one factor favoring directed certification is that the question or order for which certification is sought is one

which "must be reviewed now or not at all." Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-327, 3 NRC 408, 413 (1976), cited in Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-639, 13 NRC 469, 473 (1981).

- (3) A mere conflict between Licensing Boards on a particular question does not mean that directed certification as to that question will automatically be granted. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-371, 5 NRC 409 (1977); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-271, 1 NRC 478, 484-485 (1975). Unless it is shown that the error fundamentally alters the very shape of the ongoing adjudication, appellate review must await the issuance of a "final" Licensing Board decision. Perry, supra, ALAB-675, 15 NRC at 1112-1113.
- (4) The Appeal Board does not favor certification on the question as to whether a contention should have been admitted into the proceeding. Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-326, 3 NRC 406, reconsid. den., ALAB-330, 3 NRC 613, rev'd in part sub nom., USERDA (Clinch River Breeder Reactor Plant), CLI-76-I3, 4 NRC 67 (1976). The admission by a Licensing Board of more late-filed than timely contentions does not, in and of itself, affect the basic structure of a licensing proceeding in a pervasive or unusual manner warranting interlocutory Appeal Board review. If the late-filed contentions have been admitted by the Board in accordance with 10 CFR 2.714, it cannot be said that the Board's rulings have affected the case in a pervasive or unusual manner. Rather, the Board will have acted in furtherance of the Commission's own rules. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-706, 16 NRC 1754, 1757 (1982).
- (5) Certification will not be directed to review rulings on objections to interrogatories. Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), ALAB-318, 3 NRC 186 (1976). Nor will certification be directed to review orders rejecting objections to discovery on grounds of privilege. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-634, 13 NRC 96 (1981); Toledo Edison Co. (Davis-Besse Nuclear Power Station, Unit 1), ALAB-300, 2 NRC 752, 769 (1975). In this vein, the Appeal Board has refused to review a discovery ruling referred to it by a Licensing Board where the Board below did not explain why it believed Appeal Board involvement was necessary,

where the losing party had not indicated that it was unduly burdened by the ruling, and where the ruling was not novel. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-438, 6 NRC 638 (1977). The aggrieved party must make a strong showing that the impact of the discovery order upon that party or upon the public interest is indeed "unusual." Midland, supra. Discovery rulings rarely meet the test for discretionary interlocutory review. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-780, 20 NRC 378, 381 (1984).

- (6) As to rulings on evidence, certification will not be granted, absent exceptional circumstances, on questions of what evidence or how evidence will be admitted. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Unit 1), ALAB-314, 3 NRC 98 (1976); Power Authority of the State of New York (Green County Nuclear Power Plant), ALAB-439, 6 NRC 640 (1977); Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-504, 8 NRC 406, 410 (1978); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-630, 13 NRC 84 (1981). In fact, the Appeal Board is generally disinclined to direct certification on rulings involving "garden-variety" evidentiary matters. See Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), ALAB-353, 4 NRC 381 (1976). In Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-393, 5 NRC 767, 768 (1977), the Appeal Board reiterated that certification will not be granted to allow consideration of interlocutory evidentiary rulings, stating that, "it is simply not our role to monitor these matters on a day-to-day basis; were we to do so, 'we would have little time for anything else.'" (citations omitted). An Appeal Board will be particularly reluctant to grant a request for directed certification where the question for which certification has been sought involves the scheduling of hearings or the timing and admissibility of evidence. United States Department of Energy, Project Management Corp., Tennessee Valley Authority (Clinch River Breeder Reactor Plant), ALAB-688, 16 NRC 471, 475 (1982), citing, Toledo Edison Co. and Cleveland Electric Illuminating Co. (Davis-Besse Nuclear Power Station, Unit 1), ALAB-314, 3 NRC 98, 99-100 (1976). Adverse evidentiary rulings may turn out to have little, if any evidentiary effect on a Licensing Board's ultimate substantive decision. Therefore, determinations regarding what evidence should be admitted rarely, if ever, have a

pervasive or unusual effect on the structure of a proceeding so as to warrant interlocutory intercession by an Appeal Board. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-791, 20 NRC 1579, 1583 (1984).

- (7) The Appeal Board has denied certification under 10 CFR § 2.718(i) and rejected the Staff's position that a Licensing Board's ruling denying summary disposition of a part of a contention unwarrantedly expanded the scope of the issues and that the resulting necessity of trying these issues would cause unnecessary expense and delay. The Appeal Board found that the "immediate and irreparable harm" and "pervasive effect on the basic structure of the proceeding" alleged by the Staff in such a case was no different than that involved any time a litigant must go to hearing. Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-641, 13 NRC 550 (1981).

The Appeal Board's directed certification authority will be exercised "most sparingly." Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-514, 8 NRC 697, 698 (1978); Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-504, 8 NRC 406, 410 (1978).

While a lack of participation below may not absolutely foreclose grant of a request for directed certification in all circumstances, it does increase the movant's already heavy burden of demonstrating that the Board's intercession is necessary. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-737, 18 NRC 168, 175-76 (1983).

An argument that future litigation may be required does not satisfy the test for directed certification. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-737, 18 NRC 168, 176 n.12 (1983).

Opposition to a directed certification petition should include some discussion of petitioner's claim of Licensing Board error. Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-741, 18 NRC 371, 374 n.3 (1983), citing, Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-734, 18 NRC 11, 14 n.4 (1983).

Failure of a party to address the standards for directed certification in responding to a motion seeking such review may be construed as a waiver of any argument regarding the propriety of directed certification. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-791, 20 NRC 1579 (1984). Cf. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-734, 18 NRC 11, 14 n.4 (1983).

5.12.2.1.1 Effect of Subsequent Developments on Motion to Certify

Developments occurring subsequent to the filing of a motion for directed certification to the Appeal Board may strip the question brought of an essential ingredient and, therefore, constitute grounds for denial of the motion. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-419, 6 NRC 3, 6 (1977).

5.12.2.1.2 Effect of Directed Certification on Uncertified Issues

The pendency of review by the Appeal Board pursuant to certification does not automatically result in a stay of hearings on independent questions not intimately connected with the issue certified. See Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-374, 5 NRC 417 (1977).

5.12.3 Application to Commission for a Stay After Appeal Board's Denial of Stay

Where a party's request for a stay is denied by the Appeal Board, the party may apply to the Commission for a stay under 10 CFR § 2.788(a), (h). This, rather than a petition for review under 10 CFR § 2.786(b), is the appropriate route. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 2), CLI-78-3, 7 NRC 307, 308 (1978); Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), CLI-78-1, 7 NRC 1, 30 at n.44 (1978). Thus, while such a request to the Commission may have the appearance of an appeal, it is not treated as such.

The application for a stay and an appeal from the Appeal Board's decision denying a stay will be denied when intervenors do not make a strong showing that they are likely to prevail on the merits or that they will be irreparably harmed pending appeal of the Licensing Board's decision. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-82-11, 15 NRC 1383, 1384 (1982).

5.13 Appeals from Orders, Rulings, Initial Decision, Partial Initial Decisions

Prior to recent changes in the regulations, the vehicle for on appeal of any order, ruling or decision was the filing of exceptions. An appeal is now taken by the filing of a notice of appeal pursuant to 10 CFR § 2.762.

An appeal should be filed only where a party is aggrieved by, or dissatisfied with, the action taken below and invokes appellate jurisdiction to change the result. An appeal is unnecessary and inappropriate when a party seeks to appeal a decision whose ultimate result is in that party's favor. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 202 (1978); South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-694, 16 NRC 958, 959-60 (1982), citing, Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 202 (1978); Duke Power Co. (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-478, 7 NRC 772, 773 (1978); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-282, 2 NRC 9, 10 n.1 (1975); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-252, 8 AEC 1175, 1177, affirmed, CLI-75-1, 1 NRC 1 (1975); Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-157, 6 AEC 858, 859 (1973).

5.13.1 Time for Filing Appeals

5.13.1.1 Appeals from Initial and Partial Initial Decisions

Parties aggrieved by an initial decision or a partial decision must file and brief their appeals within the time limits set out in 10 CFR § 2.762. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-274, 1 NRC 497, 498 (1975). Failure to file an appeal in a timely manner amounts to a waiver of the appeal. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 392-93 (1974). The same rule applies to partial partial initial decisions and a party must file its appeal therefrom without waiting for the Licensing Board's disposition of the remainder of the proceeding. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-195, 7 AEC 455, 456 at n.2 (1974).

5.13.1.2 Variation in Time Limits on Appeals

Only an Appeal Board may vary the time for taking appeals from that set out in 10 CFR § 2.762; Licensing Boards have no power to do so. Consolidated Edison Co. of N.Y. (Indian Point Station, Unit 3), ALAB-281, 2 NRC 6 (1975). Of course, mere agreement of the parties to extend the

time for the filing of an appeal is not sufficient to show good cause for such a time extension. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-154, 6 AEC 827 (1973).

5.13.2 Briefs on Appeal

Briefs in support of an appeal must be filed under 10 CFR § 2.762. Failure to file a brief can result in dismissal of the appeal. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-270, 1 NRC 473 (1975). Those aspects of an appeal not addressed by the supporting brief may be disregarded by the Appeal Board. Midland, supra; Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-207, 7 AEC 957 (1974).

When an intervenor is represented by counsel, an Appeal Board has no obligation to piece together or to restructure vague references in its brief in order to make intervenor's arguments for it. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1255 (1982), citing, Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 51 (1981), aff'd sub nom., Township of Lower Alloways Creek v. Public Service Electric and Gas Co., 687 F.2d 732 (3rd Cir. 1982).

Briefs in support of appeals must specify the precise portion of the record relied upon in support of the assertion of error, 10 CFR § 2.762(a) (now 10 CFR § 2.762(d)); Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 424 (1980).

5.13.3 Effect of Failure to File Proposed Findings

The Appeal Board is not required to review an appeal where no proposed findings and rulings were filed by the appellant on the issue with respect to which the appeal is taken. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-280, 2 NRC 3, 4 at n.2 (1975); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857, 864 (1974). But see Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-709, 17 NRC 17, 21, 23 (1983).

5.13.4 Motions to Strike Appeal

A party may file a motion to strike an appeal or brief which is not in substantial compliance with the provisions of 10 CFR § 2.762. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122 (1977); Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-409, 5 NRC 1391,

1396-1397 (1977). Such a motion is also appropriate to exclude improper or scandalous appeals. Hartsville, supra, 5 NRC at 1391. A motion to strike an appeal is not appropriate, however, where an assessment of its validity requires more than minimal scrutiny of the underlying record. Id.

5.14 Certification to the Commission

Pursuant to 10 CFR § 2.785(d), an Appeal Board may certify to the Commission any major or novel question of policy, law or procedure which is properly before the Appeal Board. Such certification may be at the Appeal Board's discretion or at Commission direction.

The Appeal Board should exercise its authority to certify questions to the Commission sparingly. Absent a compelling reason, the Appeal Board will decline certification. Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-421, 6 NRC 25, 27 (1977). The same is true for the Licensing Board. Consolidated Edison Co. of N.Y., Power Authority of the State of N.Y. (Indian Point, Unit 2; Indian Point, Unit 3), LBP-82-23, 15 NRC 647, 650 (1982).

Certification by the Appeal Board to the Commission is proper in a case involving novel Staff action that presents a major policy question relevant to a pending application, where Appeal Board members have diverging views, and the procedural rules preclude the parties themselves from petitioning for Commission review because the matter came before the Appeal Board itself on certification. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-500, 8 NRC 323, 325 (1978).

The Commission's Rules of Practice contemplate that requests for relief from Licensing Board actions (for example, in matters such as discovery) be delegated to the Appeal Board, which functions as the Commission's delegate for these matters. 10 CFR § 2.785.

Absent extraordinary circumstances warranting Commission involvement, request for interlocutory review of Licensing Board rulings and other relief should be directed to the Appeal Board rather than to the Commission. 10 CFR §§ 2.730(f), 2.785. Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), CLI-80-17, 11 NRC 678 (1980). In the context of initial review of Licensing Board actions, then, a certification to the Commission would go first to the Appeal Board under the specific delegation of 10 CFR § 2.785(b)(1). Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 1), LBP-80-29, 12 NRC 581, 591 (1980).

Referral directly to the Commission by the Licensing Board will not be granted absent a strong reason for bypassing the Appeal

Board. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-81-36, 14 NRC 691 (1981).

5.15 Review of Appeal Board Decisions

10 CFR § 2.786 has been modified to provide for an appeal to the Commission of an Appeal Board's decision. No appeal is permitted with respect to a decision or action on referral or certification under 10 CFR §§ 2.718(i) or 2.730(f). Section 2.786 sets forth in detail the requirements for an appeal to the Commission. 10 CFR § 2.786(b)(1) provides that a party may file a petition for review of an Appeal Board decision within 15 days after service of that decision. Consolidated Edison Co. of N.Y. (Indian Point Station, No. 2), ALAB-414, 5 NRC 1425, 1427 (1977).

The Commission's normal practice for review of Appeal Board decisions under 10 CFR § 2.786 applies even when an Appeal Board has conducted evidentiary hearings. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-21, 14 NRC 595, 596 (1981), citing, Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903 (1981); Virginia Electric Power Co. (North Anna Power Station, Units 1 and 2), ALAB-578, 11 NRC 189 (1980); Northern States Power Co. (Prairie Island Nuclear Generating Station, Units 1 and 2), ALAB-343, 4 NRC 169 (1976).

The selection of parties to a Commission review proceeding is clearly a matter of Commission discretion (10 CFR § 2.786(b)(6)). A major factor in the Commission decision is whether a party has actively sought or opposed Commission review. This factor helps reveal which parties are interested in Commission review and whether their participation would aid that review. Therefore, a party desiring to be heard in a Commission review proceeding should participate in the process by which the Commission determines whether to conduct a review. An interested State which seeks Commission review is subject to all the requirements which must be observed by other parties. Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), CLI-77-25, 6 NRC 535 (1977).

Under 10 CFR § 2.786(a), the Commission may, on its own motion, review an Appeal Board decision. Under an earlier version of Section 2.786(a), the Commission held that it had no obligation to state its reasons for electing to review an Appeal Board decision. USERDA (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67 (1976).

In this vein, since the Commission is responsible for all actions and policies of the NRC, the Commission has the inherent authority to act upon or review sua sponte any matter before an NRC tribunal. To impose on the Commission, to the degree imposed on the judiciary, requirements of ripeness and exhaustion would be inappropriate since the Commission, as part of a regulatory

agency, has a special responsibility to avoid unnecessary delay or excessive inquiry. Public Service Co. of N.H. (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 516 (1977).

Although 10 CFR § 2.786(a) sets forth the type of issues for which, and situations in which, the Commission may direct certification of a record sua sponte prior to final action by a

Licensing or Appeal Board below, it does not limit the Commission's inherent supervisory authority. Id. Nevertheless, as a general rule, the Commission does not sit to review factual determinations made by its subordinate panels.

When an issue is of obvious significance and is not fact-dependent, and when its present resolution could materially shorten the proceedings and guide the conduct of other pending proceedings, the Commission will generally dispose of the issue rather than remand it. Seabrook, supra, 5 NRC at 517.

Within 30 days of an Appeal Board decision, the Commission may review it. 10 CFR § 2.786(a); Washington Public Power Supply System (WPPSS Nuclear Project Nos. 3 and 5), ALAB-501, 8 NRC 381, 382 (1978). (Note that under 10 CFR § 2.772, the Commission may extend the time for review.)

The Commission may dismiss its grant of review of an Appeal Board decision even though the parties have briefed the issues. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 2 and 3), CLI-82-26, 16 NRC 880, 881 (1982), citing, Jones v. State Board of Education, 397 U.S. 31 (1970), vacated and remanded ALAB-664, 15 NRC 1 (1982).

The expression of tentative conclusions upon the start of a proceeding does not disqualify the Commission from again considering the issue on a fuller record. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 4 (1980).

5.15.1 Effect of Commission's Refusal to Entertain Appeal

The Commission's refusal to entertain a discretionary appeal does not indicate its view on the merits. Nor does it preclude the Appeal Board from reconsidering the matter as to which Commission review was sought where that matter is still pending before the Appeal Board. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 260 (1978).

When the Commission declines to review an Appeal Board decision, a final agency determination has been made resulting in the termination of Appeal Board jurisdiction. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-766, 19 NRC 981, 983 (1984). See

Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-513, 8 NRC 694, 695 (1978).

5.15.2 Stays Pending Judicial Review of Appeal Board Decision

Appeal Boards will entertain requests for stays pending judicial review of their decisions and will apply the Virginia Petroleum Jobbers criteria (see Section 5.7.1, supra) to determine if a stay is appropriate. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244, 272 (1974). The Commission itself will entertain requests for a stay pending judicial review and will apply the same criteria. Natural Resources Defense Council, CLI-76-2, 3 NRC 76 (1976).

Section 10(d) of the Administrative Procedure Act (5 U.S.C. § 705) pertains to an agency's right to stay its own action pending judicial review of that action. It confers no freedom on an agency to postpone taking some action when the impetus for the action comes from a court directive. Consumers Power Company (Midland Plant, Units 1 & 2), ALAB-395, 5 NRC 772, 783-84 (1977).

The Appeal Board suspended sua sponte its consideration of an issue in order to await the possibility of Supreme Court review of related issues, following the rendering of a decision by the First Circuit Court of Appeals, where certiorari had not yet been sought or ruled upon for such Supreme Court review. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-548, 9 NRC 640, 642 (1979).

5.15.3 Stays Pending Remand After Judicial Review

Where a litigant who has prevailed on a judicial appeal of an NRC decision seeks a suspension of the effectiveness of the NRC decision pending remand, such a suspension is not controlled by the Virginia Petroleum Jobbers criteria but, instead, is dependent upon a balancing of all relevant equitable considerations. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-458, 7 NRC 155, 159-160 (1978). In such circumstances the negative impact of the court's decision places a heavy burden of proof on those opposing the stay. Id. 7 NRC at 160.

5.16 Review of Commission Decisions

5.16.1 Review of Disqualification of a Commissioner

Determinations on the disqualification of a Commissioner reside exclusively in that Commissioner, and are not reviewable by the Commission. Consolidated Edison Co. of N.Y. (Indian Point, Unit 2) and Power Authority of the

State of N.Y. (Indian Point, Unit 3), CLI-81-1, 13 NRC 1 (1981), clarified, CLI-81-23, 14 NRC 610 (1981); Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-80-6, 11 NRC 411 (1980).

5.17 Reconsideration by the Commission

The Commission's ability to reconsider is inherent in the ability to decide in the first instance. The Commission has 60 days in which to reconsider an otherwise final decision, which is at the discretion of the Commission. Florida Power and Light Company (St. Lucie Nuclear Power Plant, Unit 2), CLI-80-41, 12 NRC 650, 652 (1980).

10 CFR § 2.771 provides that a party may file a petition for reconsideration of a final decision within 10 days after the date of that decision.

A majority vote of the Commission is necessary for reconsideration of a prior Commission decision. U.S. Department of Energy, Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant), CLI-82-8, 15 NRC 1095, 1096 (1982).

5.18 Jurisdiction of NRC to Consider Matters While Judicial Review is Pending

The NRC has jurisdiction to deal with supervening developments in a case which is pending before a court, at least where those developments do not bear directly on any question that will be considered by the court. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-349, 4 NRC 235 (1976). There has been no definitive ruling as to whether the NRC has jurisdiction to consider matters which do bear directly on questions pending before a court. In any event, it is clear that the Appeal Board considers it inappropriate to do so, at least where the court has not specifically requested it, based on considerations of comity between the court and the agency. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-350, 4 NRC 365 (1976).

While the Appeal Board considers it inappropriate to consider matters bearing directly on questions pending before a court where it has not been directed to do so by the court, NRC must act promptly and constructively in effectuating the decisions of the courts. Upon issuance of the mandate, the court's decision becomes fully effective on the Commission, and it must proceed to implement it. Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-395, 5 NRC 772, 783-784 (1977). Neither the filing nor the granting of a petition for Supreme Court certiorari operates as a stay, either with respect to the execution of the judgment below or of the mandate below by the lower courts. Id. at 781.

When the U.S. Court of Appeals has stayed its mandate pending final resolution of a petition for rehearing en banc on the validity of an NRC regulation, the regulation remains in effect, and the Board is bound by those rules until that mandate is issued. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-53, 16 NRC 196, 205 (1982).

Where a party petitioning the Court of Appeals for review of the decision of the agency also petitions the agency to reconsider its decision and the Federal court stays its review pending the agency's disposition of the motion to reconsider, the Hobbs Act does not preclude the agency's reconsideration of the case. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 259 (1978).

The pendency of a criminal investigation by the Department of Justice does not necessarily preclude other types of inquiry into the same matter by the NRC. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-738, 18 NRC 177, 188 (1983).

The pendency of a Grand Jury proceeding does not legally bar parallel administrative action. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-738, 18 NRC 177, 191 n.27 (1983).

5.19 Procedure on Remand

5.19.1 Jurisdiction of the Licensing Board on Remand

The question as to whether a Licensing Board, on remand, assumes its original plenary authority or, instead, is limited to consideration of only those issues specified by the Appeal Board in the remand order was, for some time, unresolved. See Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-389, 5 NRC 727 (1977). Of course, jurisdiction may be regained by a remand order of either the Commission or a court, issued during the course of review of the decision. Issues to be considered by the Board on remand would be shaped by that order. If the remand related to only one or more specific issues, the finality doctrine would foreclose a broadening of scope to embrace other discrete matters. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-551, 9 NRC 704, 708 (1979).

More recently, however, a Licensing Board was found to be "manifestly correct" in rejecting a petition requesting intervention in a remanded proceeding where the scope of the remanded proceeding had been limited by the Commission

and the petition for intervention dealt with matters outside that scope. This establishes that a Licensing Board has limited jurisdiction in a remanded proceeding and may consider only what has been remanded to it. Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-526, 9 NRC 122, 124 n.3 (1979);

Although an adjudicatory board to which matters have been remanded would normally have the authority to enter any order appropriate to the outcome of the remand, the Commission may, of course, reserve certain powers to itself, such as, for example, reinstatement of a construction permit suspended pending the remand. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), CLI-7814, 7 NRC 952, 961 (1978).

Where the Commission remands an issue to a Licensing Board it is implicit that the Board is delegated the authority to prescribe warranted remedial action within the bounds of its general powers. However, it may not exceed these powers. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), ALAB-577, 11 NRC 18, 29 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

5.19.2 Jurisdiction of the Appeal Board on Remand

Under settled principles of finality of adjudicatory action, once an Appeal Board has finally determined a discrete issue in a proceeding, its jurisdiction is terminated with respect to that issue, absent a remand order. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-766, 19 NRC, 981, 983 (1984), citing, Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB 551, 9 NRC 704, 708-09 (1979); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-513, 8 NRC 694, 695 (1978).

The Appeal Board's jurisdiction over previously determined issues is not necessarily preserved by the pendency before it of other issues in a proceeding. Three Mile Island, supra, 19 NRC at 983, citing, North Anna, supra, 9 NRC at 708-09; Seabrook, supra, 8 NRC at 695-96.

Where the Appeal Board remands the record to the existing Licensing Board for the receipt of further evidence on the quality assurance issue, the Appeal Board may retain jurisdiction over the proceeding. Therefore, once the Licensing Board has completed the hearing on remand and rendered its supplemental decision, there will be no necessity for any party to file a new notice of appeal. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-770, 19 NRC 1163, 1168 (1984).

5.19.3 Stays Pending Remand

10 CFR § 2.788 does not expressly deal with the matter of a stay pending remand of a proceeding to the Licensing Board. Prior to the promulgation of Section 2.788, the Commission held that the standards for issuance of a stay pending remand are less stringent than those of the Virginia Petroleum Jobbers test. Public Service Co. of N.H. (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503 (1977). In this vein, the Commission ruled that the propriety of issuing a stay pending remand was to be determined on the basis of a traditional balancing of equities and on consideration of possible prejudice to further actions resulting from the remand proceedings.

Where judicial review discloses inadequacies in an agency's environmental impact statement prepared in good faith, a stay of the underlying activity pending remand does not follow automatically. Whether the project need be stayed essentially must be decided on the basis of (1) traditional balancing of equities, and (2) consideration of any likely prejudice to further decisions that might be called for by the remand. Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-395, 5 NRC 772, 784-85 (1977).

The seriousness of the remanded issue is a third factor which a Board will consider before ruling on a party's motion for a stay pending remand. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-84-53, 20 NRC 1531, 1543 (1984), citing, Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 521 (1977).

5.19.4 Participation of Parties in Remand Proceedings

Where an issue is remanded to the Licensing Board and a party did not previously participate in consideration of that issue, submitting no contentions, evidence or proposed findings on it and taking no exceptions to the Licensing Board's disposition of it, the Licensing Board is fully justified in excluding that party from participation in the remanded hearing on that issue. Status as a party does not carry with it a license to step in and out of consideration of issues at will. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 268-69 (1978).

TABLE OF CONTENTS

GENERAL MATTERS

6.0	GENERAL MATTERS	GM 1
6.1	<u>Amendments to Existing Licenses and/or Construction Permits</u>	GM 1
6.1.1	Staff Review of Proposed Amendments (Reserved)	GM 1
6.1.2	Amendments to Research Reactor Licenses (Reserved)	GM 1
6.1.3	Matters to be Considered in License Amendment Proceedings (Reserved)	GM 1
6.1.3.1	Specific Matters Considered in License Amendment Proceedings	GM 1
6.1.4	Hearing Requirements for License/Permit Amendments	GM 2
6.1.4.1	Notice of Hearing on License/Permit Amendments (Reserved)	GM 4
6.1.4.2	Intervention on License/Permit Amendments	GM 4
6.1.4.3	Summary Disposition Procedures on License/Permit Amendments	GM 4
6.1.4.4	Matters Considered in Hearings on License Amendments	GM 4
6.1.5	Primary Jurisdiction in Appeal Board to Consider License Amendment in Special Hearing	GM 5
6.1.6	Facility Changes Without License Amendments	GM 6
6.2	<u>Amendments to License/Permit Applications</u>	GM 6
6.3	<u>Antitrust Considerations</u>	GM 7
6.3.1	Consideration of Antitrust Matters After the Construction Permit Stage	GM 9
6.3.2	Intervention in Antitrust Proceedings	GM 12
6.3.3	Discovery in Antitrust Proceedings	GM 13
6.3.3.1	Discovery Cutoff Dates for Antitrust Proceedings	GM 14
6.4	<u>Attorney Conduct</u>	GM 14
6.4.1	Practice Before Licensing/Appeal Boards	GM 14
6.4.1.1	Professional Decorum Before Licensing/Appeal Boards	GM 15
6.4.2	Disciplinary Matters re Attorneys	GM 16
6.4.2.1	Jurisdiction of Special Board re Attorney Discipline	GM 17
6.4.2.2	Procedures in Special Disqualification Hearings re Attorney Conduct	GM 18
6.4.2.3	Conflict of Interest	GM 18
6.5	<u>Communications Between Staff/Applicant/Other Parties/Adjudicatory Bodies</u>	GM 19
6.5.1	<u>Ex Parte Communications Rule</u>	GM 19
6.5.2	Telephone Conference Calls	GM 20
6.5.3	Staff-Applicant Communications	GM 21
6.5.3.1	Staff Review of Application	GM 21
6.5.3.2	Staff-Applicant Correspondence	GM 22
6.5.4	Notice of Relevant Significant Developments	GM 22
6.5.4.1	Duty to Inform Adjudicatory Board of Significant Developments	GM 22

TABLE OF CONTENTS

GENERAL MATTERS

6.6	<u>Early Site Review Procedures</u>	GM 25
6.6.1	Scope of Early Site Review	GM 25
6.7	<u>Endangered Species Act</u>	GM 25
6.7.1	Required Findings re Endangered Species Act	GM 25
6.7.2	Degree of Proof Needed re Endangered Species Act	GM 26
6.8	<u>Financial Qualifications</u>	GM 26
6.9	<u>Generic Issues</u>	GM 28
6.9.1	Consideration of Generic Issues in Licensing Proceedings	GM 28
6.9.2	Effect of Unresolved Generic Issues	GM 30
6.9.2.1	Effect of Unresolved Generic Issues in Construction Permit Proceedings	GM 30
6.9.2.2	Effect of Unresolved Generic Issues in Operating License Proceedings	GM 30
6.10	<u>Inspection and Enforcement</u>	GM 31
6.10.1	Enforcement Actions	GM 32
6.10.1.1	Civil Penalties	GM 34
6.10.1.2	Show Cause Proceedings (SEE 6.24)	GM 35
6.11	<u>Masters in NRC Proceedings</u>	GM 35
6.12	<u>Material False Statements in Applications</u> (SEE 1.5.2)	GM 36
6.13	<u>Materials Licenses</u>	GM 36
6.14	<u>Motions in NRC Proceedings</u>	GM 38
6.14.1	Form of Motion	GM 39
6.14.2	Responses to Motions	GM 39
6.14.2.1	Time for Filing Responses to Motions	GM 39
6.14.3	Licensing Board Actions on Motions	GM 39
6.15	<u>NEPA Considerations</u>	GM 40
6.15.1	<u>Environmental Impact Statements (EIS)</u>	GM 42
6.15.1.1	Need to Prepare an EIS	GM 44
6.15.1.2	Scope of EIS	GM 46
6.15.2	Role of EIS	GM 48
6.15.3	Circumstances Requiring Redrafting of Final Environmental Statement (FES)	GM 49
6.15.3.1	Effect of Failure to Comment on Draft Environmental Statement (DES)	GM 51
6.15.3.2	Stays Pending Remand for Inadequate EIS	GM 52
6.15.4	Alternatives	GM 52
6.15.4.1	Obviously Superior Standard for Site Selection	GM 54

TABLE OF CONTENTS

GENERAL MATTERS

6.15.4.2	Standards for Conducting Cost-Benefit Analysis Related to Alternatives	GM 56
6.15.5	Need for Facility	GM 57
6.15.6	Cost-Benefit Analysis Under NEPA	GM 58
6.15.6.1	Consideration of Specific Costs Under NEPA	GM 60
6.15.6.1.1	Cost of Withdrawing Farmland from Production (SEE 3.7.3.5.1)	GM 61
6.15.6.1.2	Socioeconomic Costs as Affected by Increased Employment and Taxes from Proposed Facility	GM 61
6.15.7	Consideration of Class 9 Accidents in an Environmental Impact Statement	GM 61
6.15.8	Power of NRC Under NEPA	GM 62
6.15.8.1	Powers in General (Under NEPA)	GM 63
6.15.8.2	Transmission Line Routing	GM 65
6.15.8.3	Pre-LWA Activities/Offsite Activities	GM 65
6.15.8.4	Relationship to EPA with Regard to Cooling Systems	GM 66
6.15.8.5	NRC Power Under NEPA with Regard to FWPCA	GM 67
6.15.9	Spent Fuel Pool Proceedings	GM 67
6.16	<u>NRC Staff</u>	GM 68
6.16.1	<u>Staff Role in Licensing Proceedings</u>	GM 68
6.16.1.1	Staff Demands on Applicant or Licensee	GM 72
6.16.1.2	Staff Witnesses	GM 73
6.16.1.3	Post Hearing Resolution of Outstanding Matters by the Staff	GM 73
6.16.2	Status of Staff Regulatory Guides	GM 75
6.16.3	Status of Staff Position and Working Papers	GM 76
6.16.4	Status of Standard Review Plan	GM 77
6.16.5	Conduct of NRC Employees (Reserved)	GM 77
6.17	<u>Orders of Licensing and Appeal Boards</u>	GM 77
6.17.1	Compliance with Board Orders	GM 77
6.18	<u>Precedent and Adherence to Past Agency Practice</u>	GM 78
6.19	<u>Pre-Permit Activities</u>	GM 78
6.19.1	<u>Pre-LWA Activity</u>	GM 81
6.19.2	Limited Work Authorization	GM 82
6.19.2.1	LWA Status Pending Remand Proceedings	GM 83
6.20	<u>Regulations</u>	GM 84
6.20.1	Compliance with Regulations	GM 84
6.20.2	Commission Policy Statements	GM 84
6.20.3	Regulatory Guides	GM 84
6.20.4	Challenges to Regulations	GM 86
6.20.5	Agency's Interpretation of its Own Regulations	GM 88
6.21	<u>Rulemaking</u>	GM 88
6.21.1	<u>Rulemaking Distinguished from General Policy Statements</u>	GM 89

TABLE OF CONTENTS

GENERAL MATTERS

6.21.2	Generic Issues and Rulemaking	GM 89
6.22	<u>Research Reactors</u>	GM 90
6.23	<u>Disclosure of Information to the Public</u>	GM 90
6.23.1	Freedom of Information Act Disclosure	GM 91
6.23.2	Privacy Act Disclosure (Reserved)	GM 92
6.23.3	Disclosure of Proprietary Information	GM 92
6.23.3.1	Protecting Information Where Disclosure is Sought in an Adjudicatory Proceeding	GM 93
6.23.3.2	Security Plan Information Under 10 CFR § 2.790(d)	GM 95
6.24	<u>Show Cause Proceedings</u>	GM 96
6.24.1	Petition for Show Cause Order	GM 98
6.24.1.1	Grounds for Show Cause Order	GM 98
6.24.1.2	Burden of Proof for Show Cause Order	GM 99
6.24.1.3	Issues in Show Cause Proceedings	GM 99
6.24.2	Standards for Issuing Show Cause Order	GM 99
6.24.3	Review of Decision on Request for Show Cause Order	GM 100
6.24.4	Notice/Hearing on Show Cause to Licensee/Permittee	GM 101
6.24.5	Burden of Proof in Show Cause Proceedings	GM 102
6.24.6	Consolidation of Petitioners in Show Cause Proceedings	GM 102
6.24.7	Necessity of Hearing in Show Cause Proceedings	GM 103
6.24.8	Intervention in Show Cause Proceedings	GM 103
6.25	<u>Summary Disposition Procedures</u> (SEE 3.5)	GM 013
6.26	<u>Suspension, Revocation or Modification of License</u>	GM 103
6.27	<u>Technical Specifications</u>	GM 104
6.28	<u>Termination of Facility Licenses</u>	GM 105
6.29	<u>Procedures in Other Types of Hearings</u>	GM 105
6.29.1	Military or Foreign Affairs Functions	GM 105
6.29.2	Export Licensing (SEE ALSO 3.4.6)	GM 105
6.29.2.1	Jurisdiction of Commission re Export Licensing	GM 105
6.29.2.2	Export License Criteria	GM 106

6.0 GENERAL MATTERS

6.1 Amendments to Existing Licenses and/or Construction Permits

General requirements and guidance for the amendment of an existing license or construction permit for production and utilization facilities are set out in 10 CFR §§ 50.90, 50.91.

In passing upon an application for an amendment to an operating license or construction permit, "the Commission will be guided by the considerations which govern the issuance of initial licenses or construction permits to the extent applicable and appropriate." 10 CFR § 50.91. These considerations are broadly identified in 10 CFR § 50.40. In essence, Section 50.40 requires that the Commission be persuaded, *inter alia*, that the application will comply with all applicable regulations, that the health and safety of the public will not be endangered, and that any applicable requirements of 10 CFR Part 51 (governing environmental protection) have been satisfied. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 44 (1978).

For two years following the Three Mile Island accident, the Commission authorized the operation of a nuclear facility by issuing, first, a low-power license, and then, a full-power operating license. However, believing that it was unnecessary to issue two separate licenses, the Commission in recent years has "amended" an existing low-power license by dropping the low-power limitation and authorizing full-power operation. Such a "license amendment" in a previously uncontested licensing proceeding is not intended to create any new hearing rights under § 189a of the Atomic Energy Act of 1954 which requires an appropriate notice and opportunity for hearing on an amendment to an operating license. Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Unit 1), CLI-84-19, 20 NRC 1055, 1058-1059 (1984).

6.1.1 Staff Review of Proposed Amendments

(RESERVED)

6.1.2 Amendments to Research Reactor Licenses

(RESERVED)

6.1.3 Matters to be Considered in License Amendment Proceedings

(RESERVED)

6.1.3.1 Specific Matters Considered in License Amendment Proceedings

While the balancing of costs and benefits of a project is usually done in the context of an environmental impact

statement prepared because the project will have significant environmental impacts, at least one court has implied that a cost-benefit analysis may be necessary for certain federal actions which, of themselves, do not have a significant environmental impact. Specifically, the court opined that an operating license amendment derating reactor power significantly could upset the original cost-benefit balance and, therefore, require that the cost-benefit balance for the facility be reevaluated. Union of Concerned Scientists v. AEC, 499 F.2d 1069, 1084-85 (D.C. Cir. 1974).

Neither the Staff nor the Licensing Board need concern itself with the matter of the ultimate disposal of spent fuel; i.e., with the possibility that the pool will become an indefinite or permanent repository for its contents, in the evaluation of a proposed expansion of the capacity of a spent fuel pool. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-455, 7 NRC 41, 51 (1978).

A license amendment that does not involve, or result in, environmental impacts other than those previously considered and evaluated in prior initial decisions for the facility in question does not require the preparation and issuance of either an environmental impact statement or an environmental impact appraisal and negative declaration pursuant to 10 CFR § 51.5(b) and (c). Portland General Electric Company, et al. (Trojan Nuclear Plant), LBP-78-40, 8 NRC 717, 744-45 (1978), aff'd, ALAB-534, 9 NRC 287 (1979).

6.1.4 Hearing Requirements for License/Permit Amendments

The Atomic Energy Act of 1954, as amended, does not specifically require a mandatory hearing on the question as to whether an amendment to an existing license or permit should issue. At the same time, the Act and the regulations (10 CFR § 2.105(a)(3)) require that, where a proposed amendment involves "significant hazards considerations," the opportunity for a hearing on the amendment be provided prior to issuance of the amendment and that any hearing requested be held prior to issuance of the amendment. An opportunity for a hearing will also be provided on any other amendment as to which the Commission, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards determines that an opportunity for public hearing should be afforded. 10 CFR § 2.105(a)(6),(7).

Construction permit amendment/extension cases, unlike construction permit proceedings, are not subject to the mandatory hearing requirement. Washington Public Power Supply System (WPPSS Nuclear Project No. 1), ALAB-771, 19 NRC 1183, 1188 (1984).

A prior hearing is not required under Section 189a of the Atomic Energy Act, as amended, for Commission approval of a license amendment in situations where the NRC Staff makes a "no significant hazards consideration" finding. Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 622-623 (1981).

The legislative history of Section 12 of Pub. L. 97-415 (1982), the "Sholly Amendment", modifying Section 189(a) of the Atomic Energy Act of 1954, supports the determination that Congress intended that hearings on license amendments be held, if properly requested, even after irreversible actions have been taken upon a finding of no significant hazards consideration. Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Unit 1), LBP-84-23, 19 NRC 1412, 1414-15 (1984). Thus a timely filed contention will not be considered moot, even if the contested action has been completed. Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Unit 1), LBP-84-19, 19 NRC 1076, 1084 (1984).

A Board may terminate a hearing on an application for an amendment to an operating license when the only intervenor withdraws from the hearing, and there are no longer any matters in controversy. Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Unit 1), LBP-84-39, 20 NRC 1031, 1032 (1984).

A hearing can be requested on the application for a license amendment to reflect a change in ownership of a facility. Public Service Company of New Hampshire et al. (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 80 (1977).

A license amendment may become immediately effective under 10 CFR § 2.204 without a prior hearing if the public health, safety or interest requires. Furthermore, there is no inherent contradiction between a finding that there is "no significant hazard" in a given case and a finding in the same case that latent conditions may potentially cause harm in the future thus justifying immediate effectiveness of an amendment permitting corrections. Nuclear Fuel Services Inc. and New York State Energy Research and Development Authority (Western New York Nuclear Service Center), CLI-81-29, 14 NRC 940, 942 (1981).

For there to be any statutory right to a hearing on the granting of an exemption, such a grant must be part of a proceeding for the granting, suspending, revoking, or amending of any license or construction permit under the Atomic Energy Act. United States Department of Energy, Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 421 (1982).

§ 6.1.4.1

6.1.4.1 Notice of Hearing on License/Permit Amendments

(RESERVED)

6.1.4.2 Intervention on License/Permit Amendments

The requirements for intervention in license amendment proceedings are the same as the requirements for intervention in initial permit or license proceedings (see generally Section 2.9). The right to intervene is not limited to those persons who oppose the proposed amendment itself, but extends to those who raise related claims involving matters arising directly from the proposed amendment. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-245, 8 AEC 873, 875 (1974).

Persons who would have standing to intervene in new construction permit hearings, which would be required if good cause could not be shown for the extension, have standing to intervene in construction extension proceedings to show that no good cause existed for extension and, consequently, new construction permit hearings would be required to complete construction. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear 1), LBP-80-22, 12 NRC 191, 195 (1980).

6.1.4.3 Summary Disposition Procedures on License/Permit Amendments

Summary disposition procedures may be used in proceedings held upon requests for hearings on proposed amendments. Boston Edison Co. (Pilgrim Nuclear Station, Unit 1), ALAB-191, 7 AEC 417 (1974).

In a construction permit amendment proceeding, summary disposition may be granted based on pleadings alone, or pleadings accompanied by affidavits or other documentary information, where there is no genuine issue as to any material fact that warrants a hearing and the moving party is entitled to a decision in its favor as a matter of law. Washington Public Power Supply System (WPPSS Nuclear Project No. 1), ALAB-771, 19 NRC 1183, 1189 (1984), citing, 10 CFR § 2.749(d).

6.1.4.4 Matters Considered in Hearings on License Amendments

In considering an amendment to transfer part ownership of a facility, a Licensing Board held that questions concerning the legality of transferring some ownership interest in advance of the Commission action on the amendment was outside its jurisdiction and should be pursued under the provisions of 10 CFR Part 2, Subpart B (dealing with enforcement) instead. Detroit Edison Company (Enrico Fermi

Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 386 (1978). The same Licensing Board also ruled that issues to be considered in such a transfer of ownership proceeding do not include questions of the financial qualifications of the original applicant or the technical qualification of any of the applicants. Enrico Fermi, supra, 7 NRC at 392.

With regard to environmental considerations in a proceeding on an application for license amendment, a Licensing Board should not:

...embark broadly upon a fresh assessment of the environmental issues which have already been thoroughly considered and which were decided in the initial decision. Rather, the Board's role in the environmental sphere will be limited to assuring itself that the ultimate NEPA conclusions reached in the initial decision are not significantly affected by such new developments

Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 393 (1978), citing, Georgia Power Company (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 415 (1975).

A license amendment that does not involve, or result in, environmental impacts other than those previously considered and evaluated in prior initial decisions for the facility in question does not require the preparation and issuance of either an environmental impact statement or environmental impact appraisal and negative declaration pursuant to 10 CFR § 51.5(b) and (c). Portland General Electric Company, et al. (Trojan Nuclear Plant), LBP-78-40, 8 NRC 717, 744-45 (1978), aff'd, ALAB-534, 9 NRC 287 (1979). For example, the need for power is not a cognizable issue in a license amendment proceeding where it has been addressed in previous construction permit and operating license proceedings. Trojan, 9 NRC 287, supra at 289, cited in Florida Power and Light Co. (Turkey Point Nuclear Generating, Units 3 and 4), LBP-81-14, 13 NRC 677, 698 at n.49 (1981).

6.1.5 Primary Jurisdiction in Appeal Board to Consider License Amendment in Special Hearing

Although the usual procedure for amending an existing license involves a licensee's applying for the proposed amendment pursuant to 10 CFR § 50.90, this is not the sole and exclusive means for obtaining an amendment. For example, where the Commission orders a special hearing on particular issues before the Appeal Board, the licensee may seek, and the Appeal Board has jurisdiction to issue, an amendment to the license as long as the modification

sought bears directly on the questions addressed in the hearing. In such a situation, the licensee need not follow the usual procedure for filing an application for an amendment under 10 CFR § 50.90. Consolidated Edison Co. of N.Y. (Indian Point Station, Units 1, 2 & 3), ALAB-357, 4 NRC 542 (1976), aff'd, CLI-77-2, 5 NRC 13 (1977). Moreover, the Appeal Board's authority to modify license conditions in such an instance is not limited by the inadequacies of the materials submitted by the parties; the Board may take such action as the public interest warrants. Id.

6.1.6 Facility Changes Without License Amendments

10 CFR § 50.59(a)(1) provides that changes may be made to a production or utilization facility without prior NRC approval where such changes do not involve an unreviewed safety question, as defined in Section 50.59(a)(2), or a change in technical specifications. The determination as to whether a proposed change requires prior NRC approval under Section 50.59 apparently rests with the licensee in the first instance.

Where a hearing on a proposed license amendment was pending and the licensee embarked on "preparatory work" related to the proposed amendment without prior authorization, the presiding Licensing Board denied an intervenor's request for a cease and desist order with regard to such work on the grounds that there was no showing that such work posed any immediate danger to the public health and safety or violated NEPA and that such work was done entirely at the licensee's risk. Portland General Electric Co. et al. (Trojan Nuclear Plant), LBP-77-69, 6 NRC 1179, 1184 (1977). Subsequently, the Appeal Board indicated that the intervenor's complaint in this regard might more appropriately have been directed, in the first instance, to the Staff under 10 CFR § 2.206, rather than to the Licensing Board. Portland General Electric Co. et al. (Trojan Nuclear Plant), ALAB-451, 6 NRC 889, 891 at n.3 (1977).

6.2 Amendments to License/Permit Applications

Three years after the Licensing Board sanctioned a limited work authorization (LWA) and before the applicant had proceeded with any construction activity, applicant indicated it wanted to amend its construction permit application to focus only on site suitability issues. The Appeal Board "vacate[d] without prejudice" the decisions of the Licensing Board sanctioning the LWA, and remanded the case for proceedings deemed appropriate by the Licensing Board upon formal receipt of an early site approval application. Delmarva Power & Light Company (Summit Power Station, Units 1 and 2), ALAB-516, 9 NRC 5 (1979).

6.3 Antitrust Considerations

Section 105(c)(6) of the Atomic Energy Act of 1954 indicates that nothing in the Act was intended to relieve any person from complying with the federal antitrust laws. This section does not authorize the NRC to institute antitrust proceedings against licensees, but does permit the Commission to impose conditions in a license as needed to ensure that activities under the license will not contribute to the creation or maintenance of an anti-competitive situation. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), LBP-77-7, 5 NRC 452 (1977). Note that reactors licensed as research and development facilities under Section 104(b) of the Atomic Energy Act prior to the 1970 antitrust amendments are excluded from antitrust review. Florida Power & Light Co. (St. Lucie Plant, Unit 1; Turkey Point Plant, Units 3 & 4), ALAB-428, 6 NRC 221, 225 (1977); Toledo Edison Co. (Davis-Besse Nuclear Power Station, Unit 1), ALAB-323, 3 NRC 331 (1976).

The standard to be employed by the NRC is whether there is a "reasonable probability" that a situation inconsistent with the antitrust laws and the policies underlying those laws would be created or maintained by the unconditioned licensing of the facility. Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), LBP-77-24, 5 NRC 804 (1977). The Commission's statutory obligation, pursuant to Section 105(c), is not limited to investigation of the effects of construction and operation of the facility to be licensed, but rather includes an evaluation of the relationship of the specific nuclear facility to the applicant's total system or power pool. Id. This threshold determination as to whether a situation inconsistent with the antitrust laws could arise from issuance of the proposed license does not involve balancing public interest factors such as public benefits from the activity in question, public convenience and necessity, or the desirability of competition. Only after the Commission determines that an anticompetitive situation exists or is likely to develop under a proposed license are such other factors considered. In exceptional cases, the NRC may issue the license, despite the possibility of an anticompetitive situation, if it determines that, on balance, issuance of the license would be in the public interest. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), ALAB-385, 5 NRC 621, 632-633 (1977).

Under Section 105c of the Atomic Energy Act of 1954, a hearing on whether authorizing construction of a nuclear power facility "would create or maintain a situation inconsistent with the antitrust laws" is called for if the Attorney General so recommends or an interested party requests one and files a timely petition to intervene. When an antitrust hearing is convened, a permit to construct the project may not be awarded without the parties' consent until the proceedings are completed. Florida Power and

Light Company (St. Lucie Nuclear Power Plant, Unit 2), ALAB-420, 6 NRC 8, 10 (1977).

One of the policies reflected in Section 105c of the Atomic Energy Act is that a government developed monopoly - like nuclear power electricity generation - should not be used to contravene the policies of the antitrust laws. Section 105c is a mechanism to allow smaller utilities, municipals and cooperatives access to the licensing process to pursue their interests in the event that larger utility applicants might use a government license to create or maintain an anticompetitive market position. Florida Power & Light Company (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 946 (1978).

When the Attorney General recommends an antitrust hearing on a license for a commercial nuclear facility, the NRC is required to conduct one. This is the clear implication of Section 105(c)(5) of the Atomic Energy Act. Where such a hearing is held, the Attorney General or his designee may participate as a party in connection with the subject matter of his advice. Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), CLI-78-5, 7 NRC 397, 398 (1978). The Toledo Edison Company, et al. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3) and The Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-560, 10 NRC 265, 272 (1979).

In dealing with antitrust issues, the NRC's role is something more than that of a neutral forum for economic disputes between private parties. If an antitrust hearing is convened, it should encompass all significant antitrust implications of the license, not merely the complaints of private intervenors. If no one performs this function, the NRC Staff should assure that a complete picture is presented to Licensing Boards. Florida Power & Light Company (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 949 (1978).

The antitrust review undertaken by the Commission in licensing the construction of a nuclear power plant is, by statute, to determine "whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws...." Section 105c(5) of the Atomic Energy Act of 1954, 42 U.S.C. 2135c(5). This means that the licensed activities must play some active role in creating or maintaining the anticompetitive situation. Put another way, the nuclear power plant must be an actor, an influence, on the anticompetitive scene. Florida Power and Light Co. (St. Lucie Plant, Unit No. 2), ALAB-665, 15 NRC 22, 32 (1982).

Where a license is found to create or maintain a situation inconsistent with the antitrust laws, the Commission may impose corrective conditions on the license rather than withhold it. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-13, 7 NRC 583, 597 (1978).

Only the NRC is empowered to make the initial determination under section 105(c) whether activities under the license would create or maintain a situation inconsistent with the antitrust laws, and if so what license conditions should be required as a remedy. Houston Lighting & Power Co., et al. (South Texas Project, Units 1 and 2), LBP-79-27, 10 NRC 563, 574 (1979).

In order to conduct a section 105(c) proceeding, it is not necessary to establish a violation of the antitrust laws. Any violation of the antitrust laws also meets the less rigorous standard of section 105(c) which is inconsistency with the antitrust laws. South Texas, supra, at 570.

NRC statutory responsibilities under section 105(c) cannot be impaired or limited by a State agency. South Texas, supra, at 577.

The legislative history and language of the Public Utilities Regulatory Policies Act of 1978 clearly establish that the act was not intended to divest NRC of its antitrust jurisdiction. South Texas, supra, at 577.

Once the U.S. Attorney General has withdrawn from a proceeding and permission has been granted to the remaining intervenors to withdraw, the Board no longer has jurisdiction to entertain an antitrust proceeding under the provisions of the Atomic Energy Act. Florida Power and Light Co. (St. Lucie Plant, Unit No. 2), LBP-82-21, 15 NRC 639, 640-641 (1982).

6.3.1 Consideration of Antitrust Matters After the Construction Permit Stage

The NRC antitrust responsibility does not extend over the full life of a licensed facility but is limited to two procedural stages - the construction permit stage and the operating license stage. This limitation on NRC jurisdiction extends to the Director of Nuclear Reactor Regulation as well as to the rest of the NRC. Florida Power & Light Co. (St. Lucie Plant, Unit 1; Turkey Point Plant, Units 3 & 4), ALAB-428, 6 NRC 221, 226-227 (1977). For reactors which have undergone antitrust review in connection with a construction permit application pursuant to Section 105(c) of the Atomic Energy Act, paragraph (c)(2) of that section governs the question of antitrust review at the operating license stage. Antitrust issues may only be pursued at this stage if a finding is made that the licensee's activities have significantly changed subsequent to the construction permit review. Houston Lighting & Power Co. et al. (South Texas Project, Units 1 & 2), CLI-77-13, 5 NRC 1303, 1310 (1977). Where a construction permit antitrust proceeding is under way, the antitrust provisions of the Atomic Energy Act effectively preclude the Commission from instituting a second antitrust hearing in conjunction with an operating license application for the plant. Florida

Power and Light Co. (St. Lucie Plant, Unit No. 2), ALAB 661, 14 NRC 1117, 1122 (1981). Where, subsequent to issuance of a construction permit and to termination of the jurisdiction of the Licensing Board which considered the application, new contractual arrangements give rise to antitrust contentions, such contentions cannot be resolved by the original Licensing Board. Houston Lighting & Power Co. et al. (South Texas Project, Units 1 and 2), ALAB-381, 5 NRC 582 (1977). The Commission's regulations indicate that the new antitrust concerns should be raised at the operating license stage. The Commission Staff could also initiate show cause proceedings requiring the licensee to demonstrate why antitrust conditions should not be imposed in an amendment to the construction permit. Id. Where the petitioner who raises the antitrust contentions is a co-licensee, 10 CFR § 50.90 permits the petitioner to seek an amendment to the construction permit which would impose antitrust considerations. Id.

The NRC may facilitate operating license stage antitrust review by waiving the requirements of 10 CFR § 50.30(d) and § 50.34(b) (which require operating license applications to be accompanied by the filing of an FSAR). This permits operating license antitrust review at a much earlier stage prior to completion of the FSAR. South Texas, CLI-77-13 supra at 5 NRC 1319.

Congress did not invest the NRC with ongoing antitrust responsibility during the period subsequent to issuance of an operating license and the NRC's authority in this area terminates at that point. CLI-77-13 supra at 5 NRC 1317. Congress did not envision for the NRC a broad, ongoing antitrust enforcement role but, rather, established specific procedures (and incentives) intended to tie antitrust review to the two-step licensing process. Florida Power & Light Company (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 945 (1978).

Section 105 of the Atomic Energy Act and its implementing regulations contemplate that mandatory antitrust review be conducted early in the construction permit process. Florida Power & Light Company (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 946 (1978).

Antitrust review might be conducted out-of-time if significant doubts were cast on the adequacy of the initial antitrust review. Florida Power & Light Company (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 945 (1978).

Despite the fact that further antitrust review following issuance of a construction permit will usually await the operating license stage of review, a construction permit amendment may give rise to an additional antitrust review

prior to the OL stage. An application for a construction permit amendment that would add new co-owners to a plant is within the scope of the phrase in Section 105c(1) of the Atomic Energy Act requiring antitrust review of "any license application." As such, it triggers an opportunity for intervention based on the antitrust aspects of adding new co-owners. To hold otherwise would subvert Congressional intent by insulating applicants coming in by way of amendment from antitrust investigation. Moreover, because a joint venture might raise antitrust problems that would not exist if the joint applicants were considered individually, the Licensing Board has jurisdiction to consider intervention petitions and antitrust issues filed in connection with a new application for joint ownership. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-13, 7 NRC 583, 588 (1978).

A narrower, second antitrust review is to occur at the operating license stage, if and only if, "The Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission..." in connection with the construction permit for the facility. South Carolina Electric and Gas Company, et al. (Virgil C. Summer Nuclear Station, Unit 1), CLI-80-28, 11 NRC 817, 823 (1980).

The ultimate issue in the operating license stage antitrust review is the same as for the construction permit review: would the contemplated license create a situation inconsistent with the antitrust laws or the policies underlying those laws. South Carolina Electric and Gas Company, et al. (Virgil C. Summer Nuclear Station, Unit 1), CLI-80-28, 11 NRC 817, 824 (1980).

To trigger antitrust review at the operating license stage, the significant changes specified by Section 105(c) of the Atomic Energy Act must (1) have occurred since the previous antitrust review of the licensee; (2) be reasonably attributable to the licensee; and (3) have antitrust implications that would warrant Commission remedy. This requires an examination of (a) whether an antitrust review would be likely to conclude that the situation as changed has negative antitrust implications and (b) whether the Commission has available remedies. Summer, supra, at 824-825.

Under section 105c(2) of the Atomic Energy Act, a second formal antitrust review at the operating stage of a reactor licensing proceeding is the exception not the rule. A petition for determination of significant changes is characterized as an informal adjudicatory process and is not governed by the Commission's Rules of Practice for formal

procedures (10 CFR Part 2, Subpart G). Central Electric Power Cooperative, Inc. (Virgil C. Summer Nuclear Station, Unit No. 1), CLI-81-26, 14 NRC 787, 792 (1981).

In determining whether significant changes have occurred which require referral of the matter to the Attorney General, the Commission must find: (1) that there is a factual basis for the determination; and (2) that the alleged changes are reasonably apparent. Summer, supra.

Although the NRC regulations do not specify a period during which requests for a significant change determination will be timely, the relevant question in determining timeliness is whether the request has followed sufficiently promptly the operating license application. Central Electric Power Cooperative, supra, at 829.

6.3.2 Intervention in Antitrust Proceedings

The Commission's regulations make clear that an antitrust intervention petition: (1) must first describe a situation inconsistent with the antitrust laws; (2) would be deficient if it consists of a description of a situation inconsistent with the antitrust laws -- however well pleaded -- accompanied by a mere paraphrase of the statutory language alleging that the situation described therein would be created or maintained by the activities under the license; and (3) must identify the specific relief sought and whether, how and the extent to which the request fails to be satisfied by the license conditions proposed by the Attorney General. The most critical requirement of an antitrust intervention petition is an explanation of how the activities under the license would create or maintain an anticompetitive situation. Florida Power and Light Co. (St. Lucie Plant, Unit 2), ALAB-665, 15 NRC 22, 29 (1982); citing, Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-279, 1 NRC 559, 574-575 (1975).

Although section 105 of the Atomic Energy Act encourages petitioners to voice their antitrust claims early in the licensing process, reasonable late requests for antitrust review are not precluded so long as they are made concurrent with licensing. Licensing Boards must have discretion to consider individual claims in a way which does justice to all of the policies which underlie Section 105c and the strength of particular claims justifying late intervention. Florida Power & Light Company (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 946 (1978).

The criteria of 10 CFR § 2.714 for late petitions are as appropriate for evaluation of late antitrust petitions as in health, safety and environmental licensing, but the

Section 2.714 criteria should be more stringently applied to late antitrust petitions, particularly in assessing the good cause factor. Florida Power & Light Co. (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 946 (1978).

Late requests for antitrust review hearings may be entertained in the period between the filing of an application for a construction permit -- the time when the advice of the Attorney General is sought -- and its issuance. However, as the time for issuance of the construction permit draws closer, Licensing Boards should scrutinize more closely and carefully the petitioner's claims of good cause. Florida Power & Light Co. (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 946 (1978).

Where an antitrust petition is so late that relief will divert from the licensee needed and difficult-to-replace power, the Licensing Board may shape any relief granted to meet this problem. Florida Power & Light Co. (St. Lucie Plant, Unit 2), CLI-78-12, 7 NRC 939, 948 (1978).

Where a late petition for intervention is involved, the special factors set forth within 10 CFR § 2.714(a)(1) must be balanced and applied before petitions may be granted; the test becomes increasingly vigorous as time passes. Of particular significance is the availability of other remedies for the late petitioner where remedies are available before the Federal Energy Regulating Commission and petitioner has not shown that the remedy is insufficient. Florida Power and Light Co. (St. Lucie Plant, Unit No. 2), LBP-81-28, 14 NRC 333, 336, 338 (1981).

6.3.3 Discovery in Antitrust Proceedings

The Noerr-Pennington doctrine will operate to immunize those legitimately petitioning the government, or exercising other First Amendment rights, from liability under the antitrust laws, even where the challenged activities were conducted for purposes condemned by the antitrust laws. Florida Power & Light Co. (St. Lucie Plant, Unit 2), LBP-79-4, 9 NRC 164, 174 (1979).

Material on Applicant's activities designed to influence legislation and requested through discovery is relevant and may reasonably be calculated to lead to the discovery of admissible evidence, and therefore is not immune from discovery. The Noerr-Pennington cases, on which applicant had based its argument, go to the substantive protection of the First Amendment and do not immunize litigants from discovery. Appropriate discovery into Applicant's legislative activities must be permitted, and the information sought to be discovered may well be directly admissible as evidence. St. Lucie, supra, at 175.

6.3.3.1 Discovery Cutoff Dates for Antitrust Proceedings

The imposition of the cutoff date for discovery is for the purpose of making a preliminary ruling about relevancy for discovery. The cutoff date is only a date after which, in the dimension of time, relevancy may be assumed for discovery purposes. Requests for information from before the cutoff date must show that the information requested is relevant in time to the situation to be created or maintained by a licensed activity. If the information sought is relevant, and not otherwise barred, it may be discovered, no matter how old, upon a reasonable showing. This is entirely consistent with 10 CFR § 2.740(b) and Rule 26(b) which are in turn consistent with the Manual for Complex Litigation, Part 1, § 4.30. Florida Power & Light Company (St. Lucie Plant, Unit No. 2), LBP-79-4, 9 NRC 164, 169-70 (1979).

In antitrust proceedings, the relevant period for discovery must be determined by the circumstances of the alleged situation inconsistent with the antitrust laws, not the planning of the nuclear facility. St. Lucie, supra, at 168.

The standard for allowing discovery requests predating a set cutoff date is that there be a reasonable possibility of relevancy; it is not necessary to show relevancy plus good cause. St. Lucie, supra, at 172.

6.4 Attorney Conduct

6.4.1 Practice Before Licensing/Appeal Boards

10 CFR § 2.713 contains general provisions with respect to representation by counsel in an adjudicatory proceeding, standards of conduct and suspension of attorneys.

Counsel appearing before all NRC adjudicatory tribunals "have a manifest and iron-clad obligation of candor." This obligation includes the duty to call to the tribunal's attention facts of record which cast a different light upon the substance of arguments being advanced by counsel. Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2), ALAB-505, 8 NRC 527, 532 (1978).

A lawyer citing legal authority to an adjudicatory board in support of a position, with knowledge of other applicable authority adverse to that position, has a clear professional obligation to inform the board of the existence of such adverse authority. Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1174 n.21 (1983), citing, Rule 3.3(a)(3) of the ABA Model Rules of Professional Conduct (1983).

Canon 7 of the ABA Code of Professional Responsibility, which exhorts lawyers to represent their clients "zealously within the bounds of the law," and its Associated Ethical Considerations and Disciplinary Rules provide the standards by which attorneys should abide in the preparation of testimony for NRC proceedings. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 916, 918 (1982).

In judging the propriety of a lawyer's participation in the preparation of testimony of a witness, the key factor is not who originated the words that comprise the testimony, but whether the witness can truthfully attest that the statement is complete and accurate to the best of his or her knowledge. Midland Plant, supra, at 16 NRC 918 (1982).

Counsel have an obligation to keep adjudicatory boards informed of the material facts which are relevant to issues pending before them. The Regents of the University of California (UCLA Research Reactor), LBP-84-22, 19 NRC 1383, 1401 (1984), citing, Midland, supra, 16 NRC at 910; Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3), ALAB-677, 15 NRC 1387 (1982); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 172 n.64 (1978).

A party's obligation to disclose material information extends to, and is often the responsibility of, counsel, especially in litigation involving highly complex technology where many decisions regarding materiality of information can only be made jointly by a party and its counsel. UCLA, supra, 19 NRC at 1405.

Counsel's obligations to disclose all relevant and material factual information to the Licensing Board under the Atomic Energy Act, are not substantially different from those laid out by the ABA's Model Rules of Professional Conduct. In discharging his obligations, counsel may verify the accuracy of factual information with his client or verify the accuracy of the factual information himself. UCLA, supra, 19 NRC at 1406-07.

6.4.1.1 Professional Decorum Before Licensing/Appeal Boards

The Commission's Rules of Practice require parties and their representatives to conduct themselves with honor, dignity, and decorum as they should before a court of law. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 916 (1982), citing, 10 CFR 2.713(a).

The Commission generally follows the American Bar Association's Code of Professional Responsibility in judging lawyer conduct in NRC proceedings. Midland Plant, supra, at 16 NRC 916, citing, Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-204, 7 AEC 835, 838 (1974).

Gamesmanship and "sporting conduct" between or among lawyers and parties is not condoned in Nuclear Regulatory Commission proceedings. Midland Plant, supra, at 16 NRC 919.

Attorneys practicing before Licensing and Appeal Boards are to conduct themselves in a dignified and professional manner and are not to engage in name calling with respect to opposing counsel. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-204, 7 AEC 835 (1974). In this vein, Licensing Boards have a duty to regulate the course of hearings and the conduct of participants in the interest of insuring a fair, impartial, expeditious and orderly adjudicatory process, 10 CFR § 2.718(e); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-417, 5 NRC 1442, 1445-46 (1977), and the Commission has the authority to disqualify an attorney or an entire law firm for unprofessional conduct, whatever its form. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-332, 3 NRC 785 (1976).

The Code of Professional Responsibility considerably restricts the comments that counsel representing a party in an administrative hearing may make to the public. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-592, 11 NRC 744, 750 (1980).

Parties should not impugn one another's integrity without first submitting supporting evidence. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-5A, 15 NRC 216 (1982).

6.4.2 Disciplinary Matters re Attorneys

The Commission has the authority to disqualify an attorney or an entire law firm for unprofessional conduct, whatever its form. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-332, 3 NRC 785 (1976). 10 CFR § 2.713(c) lists various acts or omissions by an attorney which would justify his suspension from further participation in a proceeding. That Section also sets forth the procedure to be followed by the presiding officer in issuing an order barring the attorney from participation.

A Licensing Board may, if necessary for the orderly conduct of a proceeding, reprimand, censure or suspend from participation in the particular proceeding pending before it any party or representative of a party who shall be guilty of disorderly, disruptive, or contemptuous conduct. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-82-87, 16 NRC 1195, 1201 (1982).

Petitions which raise questions about the ethics and reputation of another member of the Bar should only be filed after careful research and deliberation. Moreover, although ill-feeling understandably results from any petition for disciplinary action, retaliation in kind should not be the routine response. Cincinnati Gas and Electric Co., et al. (William H. Zimmer Nuclear Power Station, Unit No. 1), CLI-82-36, 16 NRC 1512, 1514, n.1 (1982).

The Commission has no interest in general matters of attorney discipline and chooses to focus instead on the means necessary to keep its judicatory proceedings orderly and to avoid unnecessary delays. Zimmer, supra, 16 NRC at 1514 n.1, citing, 45 Fed. Reg. 3594 (1980).

While the Commission has inherent supervisory power over all agency personnel and proceedings, it is not necessarily appropriate to bring any and all matters to the Commission in the first instance. Under 10 CFR § 2.713, where a complaint relates directly to a specified attorney's actions in a proceeding before a Licensing Board, that complaint should be brought to the Board in the first instance if correction is necessary for the integrity of the proceedings. Zimmer, supra, 16 NRC at 1514, citing, 45 Fed. Reg. 3594 (1980).

6.4.2.1 Jurisdiction of Special Board re Attorney Discipline

The Special Board appointed to consider the disqualification issue has the ultimate responsibility as to that decision. The Licensing Board before which the disqualification question was initially raised should determine only whether the allegations of misconduct state a case for disqualification and should refer the case to the Special Board if they do. After the Special Board's decision, the Licensing Board merely carries out the ministerial duty of entering an order in accordance with the Special Board's decision. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-332, 3 NRC 785 (1976).

6.4.2.2 Procedures in Special Disqualification Hearings re Attorney Conduct

The attorney or law firm accused of misconduct is entitled to a full hearing on the matter. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-332, supra. The Commission's discovery rules are applicable to the proceeding and all parties have the right to present evidence and cross-examine witnesses. Id. The burden of proof is on the party moving for disqualification and the Special Board's decision must be based on a preponderance of the evidence. Id.

In general, the doctrine of collateral estoppel applies to disqualification proceedings. An earlier judicial decision would be entitled to collateral estoppel effect unless giving it effect would intrude upon the Commission's ability to ensure the orderly and proper prosecution of its internal proceedings. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), ALAB-378, 5 NRC 557 (1977). As to costs incurred from an attorney discipline proceeding, there is no basis on which NRC can reimburse a private attorney for out-of-pocket expenses in connection with the termination and settlement of a special proceeding brought to investigate misconduct charges against a private attorney and NRC Staff attorneys. Consumers Power Co. (Midland Plant, Units 1 & 2), CLI-79-3, 9 NRC 107, 109 (1979).

6.4.2.3 Conflict of Interest

Disqualification of an attorney or law firm is appropriate where the attorney formerly represented a party whose interests were adverse to his present client in a related matter. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), ALAB-332, supra. The aggrieved former client need not show that specific confidences were breached but only that there is a substantial relationship between the issues in the pending action and those in the prior representation. Id.

A perceived bias in an attorney's view of a proceeding is distinguishable from a situation where there is an attorney conflict of interest of a type recognized in law to compromise counsel's ability to represent his client, e.g., that he had previously represented another party in the proceeding, or had a financial interest in common with another party, or the like. Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit No. 1), CLI-82-36, 16 NRC 1512, 1515 (1982).

An attorney for a party in an NRC proceeding should discontinue his or her representation of the client when it

becomes apparent that the attorney will be called to testify as a necessary witness in the proceeding. However, an attorney will not be disqualified when it is shown that that the client would suffer substantial hardship because of the distinctive value of the attorney. A party may waive the possible disqualification of its attorney if the opposing parties are not thereby prejudiced. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-85-19, 21 NRC 1707, 1717 (1985), citing, DR 5-101(B)(4), DR 5-102(A) and (B) of the Code of Professional Responsibility, and Model Rule 3.7(a)(3) of the ABA Model Rules of Professional Conduct.

6.5 Communications Between Staff/Applicant/Other Parties/Adjudicatory Bodies

6.5.1 Ex Parte Communications Rule

10 CFR § 2.780 sets forth the applicable rules with respect to ex parte (off-the-record) communications involving NRC personnel who exercise quasi-judicial functions with respect to the issuance, denial, amendment, transfer, renewal, modification, suspension or revocation of a license or permit. In general, the regulation prohibits ex parte communications with Commissioners, members of their immediate staffs, NRC officials and employees who advise the Commissioners in the exercise of their quasi-judicial functions, Licensing Board members and their immediate staffs and Appeal Board members and their immediate staffs.

The ex parte rule proscribes litigants' discussing, off-the-record, matters in litigation with members of the adjudicatory board. It does not apply to discussions between and among the parties, between the NRC Staff and the applicant or between the Staff, applicant, other litigants and third parties (including state officials and Federal agencies) not involved in the proceeding. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 269 (1978). The NRC Staff does not advise the Commission or the Boards. The Staff is a separate and distinct entity that participates as a party in a proceeding and may confer with the other parties. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC 848, 883 n.161 (1984).

The ex parte rule relates only to discussions of any substantive matter at issue in a proceeding on the record. It does not apply to discussions of procedural matters, such as extensions of time for filing of affidavits. Consumers Power Co. (Big Rock Point Plant), LBP-82-8, 15 NRC 299, 336 (1982). See, e.g., Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station,

Unit 1), CLI-83-5, 17 NRC 331, 332 (1983), citing, 10 CFR § 2.780(a).

Nothing in the Commission's ex parte rule pursuant to 10 CFR § 2.780 precludes conversations among parties, none of whom is a decisionmaker in the licensing proceeding. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-680, 16 NRC 127, 144 (1982). See also Southern California Edison Co., et al. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 378 (1983), citing, 10 CFR § 2.780; San Onofre, supra, 16 NRC at 144.

Generic discussions of general health and safety problems and responsibilities of the Commission not arising from or directly related to matters in adjudication are not ex parte. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-3, 17 NRC 72, 74 (1983), citing, 10 CFR § 2.780(d).

Regarding a prohibition on ex parte contacts, the ex parte rule is not properly invoked where in an enforcement matter the licensee is complying with Staff's order and has not sought a hearing, nor is a petition for an enforcement action sufficient to invoke the provisions of 10 CFR § 2.780. Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit No. 1), CLI-83-4, 17 NRC 75, 76 (1983).

The Staff's communication of the results of its reviews, through public filings served on all parties and the adjudicatory boards, does not constitute an ex parte communication. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-738, 18 NRC 177, 197 n.39 (1983).

6.5.2 Telephone Conference Calls

A conference call between an adjudicatory board and some but not all of the parties should be avoided except in the case of the most dire necessity. Such calls must be avoided even where no substantive matters are to be discussed and the rule precluding ex parte communications is, therefore, not technically violated. Puerto Rico Water Resources Authority (North Coast Nuclear Plant, Unit 1), ALAB-313, 3 NRC 94 (1976).

In general, where substantive matters are to be considered in the conference call, all parties must be on the line. For example, when a prehearing conference is conducted via telephone, the Licensing Board must insure that representatives of all parties concerned are on the line unless that

representation has been waived. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-334, 3 NRC 809 (1976). Promptly after any prehearing conference carried on via telephone during which rulings governing the conduct of future proceedings have been made, Licensing Boards must draft and enter written orders confirming those rulings. Id.; 10 CFR § 2.752(c).

Where a party informs an adjudicatory board that it is not interested in a matter to be discussed in a conference call between the board and the other litigants, that party cannot later complain that it was not consulted or included in the conference call. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 269 n.63 (1978).

6.5.3 Staff-Applicant Communications

6.5.3.1 Staff Review of Application

A prospective applicant may confer informally with the Staff prior to filing its application. 10 CFR §§ 2.101 (a)(1), 2.102(a).

A Licensing Board has held that the Staff may continue to confer privately with the applicant even after a hearing has been noticed. In addition, the Board ruled that, while a Licensing Board has supervisory authority over Staff actions that are part of the hearing process, it has no jurisdiction to supervise the Staff's review process and, as such, cannot order the Staff and applicant to hold their private discussions in the vicinity of the site or to provide transcripts of such discussions. Northeast Nuclear Energy Co. (Montague Nuclear Power Station, Units 1 & 2), LBP-75-19, 1 NRC 436 (1975).

With certain exceptions, all meetings conducted by the NRC technical Staff as part of its review of a particular domestic license or permit application, including applications for amendments to a license or permit, are to be open to attendance by all parties or petitioners for leave to intervene in the case. See Domestic License Applications, Open Meetings and Statement of NRC Staff Policy. 43 Fed. Reg. 28058 (June 28, 1978).

In the absence of a demonstration that meetings were deliberately being scheduled with a view to limiting the ability of intervenors' representatives to attend, the imposition of hard and fast rules on scheduling and meeting location would needlessly impair the Staff's ability to obtain information. The Staff should regard the intervenors' opportunity to attend as one of the factors to be taken into account in making its decisions on the location

of such meetings. Fairness demands that all parties be informed of the scheduling of such meetings at the same time. Consolidated Edison Co. of N.Y. (Indian Point, Unit 2); Power Authority of the State of N.Y. (Indian Point, Unit 3), CLI-82-41, 16 NRC 1721, 1722-23 (1982).

6.5.3.2 Staff-Applicant Correspondence

All Staff-applicant correspondence is required to be served on all parties to a proceeding and such service must be continued through the entire judicial review process, at least with respect to those parties participating in the review and those issues which are the subject of the review. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-184, 7 AEC 229, 237 at n.9 (1974); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-179, 7 AEC 159, 183 (1974). Note that this requirement of service on all parties of documents exchanged between applicant and Staff in the review process does not arise from 10 CFR § 2.701(b) which separately requires that all documents offered for filing in adjudications be served on all parties. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 NRC 2069, 2112 (1982).

6.5.4 Notice of Relevant Significant Developments

6.5.4.1 Duty to Inform Adjudicatory Board of Significant Developments

The NRC Staff has an obligation to lay all relevant materials before the Board to enable it to adequately dispose of the issues before it. Consolidated Edison Co. of N.Y. (Indian Point Station, Units 1, 2 & 3), CLI-77-2, 5 NRC 13 (1977); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1091 n.18 (1983), citing, Indian Point, supra, 5 NRC at 15. See generally Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3), ALAB-677, 15 NRC 1387 (1982); Allied-General Nuclear Services (Barnwell Nuclear Fuel Plant Separations Facility), ALAB-296, 2 NRC 671, 680 (1975). Moreover, the Staff is obligated to make every effort promptly to report newly discovered important information or significant developments related to a proceeding to the presiding Licensing Board and the parties. This duty to report arises immediately upon the Staff's discovery of the information, and the Staff is not to delay in reporting until it has completed its own evaluation of the matter. Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), CLI-76-22, 4 NRC 480, 491 n.11 (1976). This same obligation extends to all parties, each of whom has an affirmative duty to keep Boards advised of significant changes and developments relevant to the

proceeding. Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 & 2), ALAB-291, 2 NRC 404, 408 (1975); Duke Power Co. (William B. McGuire Nuclear Station, Units 1 & 2), ALAB-143, 6 AEC 623, 625-626 (1973); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-774, 19 NRC 1350, 1357 (1984).

Parties in Commission proceedings have an absolute obligation to alert adjudicatory bodies in a timely fashion of material changes in evidence regarding: (1) new information that is relevant and material to the matter being adjudicated; (2) modifications and rescissions of important evidentiary submissions; and (3) outdated or incorrect information on which the Board may rely. Similarly, internal Staff procedures must ensure that Staff counsel be fully appraised of new developments. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3), ALAB-677, 15 NRC 1387, 1388, 1394 (1982), citing, Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 406 n.26 (1976); Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 411 (1975); and Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623, 625 (1973); Tennessee Valley Authority (Phipps Bend Nuclear Plant, Units 1 and 2), ALAB-752, 18 NRC 1318, 1320 (1983); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-765, 19 NRC 645, 656 (1984); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC 848, 884 n.163 (1984).

All parties, including the Staff, are obliged to bring any significant new information to the boards' attention. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-738, 18 NRC 177, 157 n.39 (1983), citing, Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3), ALAB-677, 15 NRC 1387, 1394 (1982); Union Electric Co. (Callaway Plant, Unit 1), ALAB-750, 18 NRC 1205, 1210 n.11 (1983).

Parties and counsel must adhere to the highest standards in disclosing all relevant factual information to the Licensing Board. Material facts must be affirmatively disclosed. If counsel have any doubt whether they have a duty to disclose certain facts, they must disclose. An externality such as a threatened lawsuit does not relieve a party of its duty to disclose relevant information and its other duties to the Board. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-81-63, 14 NRC 1768, 1778, 1795 (1981); Union Electric Co. (Callaway Plant, Unit 1), ALAB-750, 18 NRC 1205, 1210 n.11 (1983); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-786, 20 NRC 1087, 1092 n.8 (1984); Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 624 n.9 (1985).

If a licensee or applicant has a reasonable doubt concerning the materiality of information in relation to its Board notification obligation or duties under section 186 of the Atomic Energy Act, 42 U.S.C. § 2236a, the information should be disclosed for the Board to decide its true worth. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-774, 19 NRC 1350, 1358 (1984), citing, McGuire, supra, 6 AEC at 625 n.15; and Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 914 (1982), review declined, CLI-83-2, 17 NRC 69 (1983); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-85-6, 21 NRC 447, 461 (1985).

Before submitting information to the Board pursuant to its notification obligations, a licensee or applicant is entitled to a reasonable period of time for internal review of the documents under consideration. However, an obvious exception exists for information that could have an immediate effect on matters currently being pursued at hearing, or that disclose possible serious safety or environmental problems requiring immediate attention. An applicant or licensee is obliged to report the latter to the NRC Staff without delay in accordance with numerous regulatory requirements. See, e.g., 10 CFR § 50.72. Three Mile Island, supra, 19 NRC at 1359 n.8.

The routine submittal of informational copies of technical materials to a Board is not sufficient to fulfill a party's obligation to notify the Board of material changes in significant matters relevant to the proceeding. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-84-53, 20 NRC 1531, 1539 n.23 (1984).

If a Board notification is to serve its intended purpose, it must contain an exposition adequate to allow a ready appreciation of (1) the precise nature of the addressed issue and (2) the extent to which the issue might have a bearing upon the particular facility before the Board. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1114 n.59 (1983), citing, Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-551, 9 NRC 704, 710 (1979); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-786, 20 NRC 1087, 1092 n.8 (1984).

The untimely provision of significant information is an important measure of a licensee's character, particularly if it is found to constitute a material false statement. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-738, 18 NRC 177, 198 (1983).

6.6 Early Site Review Procedures

Part 2 of the Commission's regulations have been amended to provide for adjudicatory early site reviews. See 10 CFR § 2.101 (a-1), §§ 2.600-2.606.. The early site review procedures, which differ from those set forth in Appendix Q to 10 CFR Part 50, allow for the early issuance of a partial initial decision on site suitability matters.

Early site review regulations provide for a detailed review of site suitability matters by the Staff, an adjudicatory hearing directed toward the site suitability issues proposed by the applicant, and the issuance by a Licensing Board of an early partial decision on site suitability issues. A partial decision on site suitability is not a sufficient basis for the issuance of a construction permit or for a limited work authorization. Neither of these steps can be taken without further action, which includes the full review required by Section 102(2) of the National Environmental Policy Act of 1969, as amended (NEPA), and by 10 CFR Part 51, which implements NEPA. Philadelphia Electric Company (Fulton Generating Station, Units 1 and 2), LBP-79-23, 10 NRC 220, 223 (1979).

The early partial decision on site suitability does not authorize the applicant to do anything; it does provide applicant with information of value to applicant in its decision to either abandon the site or proceed with plans for the design, construction, and operation of a specific nuclear power plant at that site. Implementation of any such plans is dependent upon further review by the Staff and approval by a Licensing Board. Fulton, supra.

6.6.1 Scope of Early Site Review

The early site review is not a "major Federal action significantly affecting the human environment" such as would require a full NEPA review of the entire proposed project. Commonwealth Edison Company (Carroll County Site), ALAB-601, 12 NRC 18, 25 (1980).

The scope of the early site review is properly limited to the issues specified in the notice of hearing subject to the limits of NEPA, Section 102(2)(c), 42 U.S.C § 4332(2)(c). Carroll County Site, supra, at 26.

6.7 Endangered Species Act

6.7.1 Required Findings re Endangered Species Act

Under Section 7 of the Endangered Species Act, Federal agencies, in consultation with the Department of Interior, are to take such action as necessary to insure that actions authorized by them do not "jeopardize the continued existence of such endangered species." Tennessee Valley

Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-463, 7 NRC 341, 360 (1978). The Federal agency is to obtain input from the Department of Interior and then make its decision. A Licensing Board may not approve relevant action until Interior has been consulted. Approval by a Licensing Board which is conditioned on later approval by the Department of Interior does not fulfill the requirements of the Endangered Species Act. "To give advance approval to whatever Interior might decide is to abdicate the Commission's duty under the Act to make its own fully informed decision." Id. 7 NRC at 363-364.

A Licensing Board's finding with regard to the Endangered Species Act aspects of a construction permit application should not be restricted to a consideration of the particular points raised by contentions. Once informed that an endangered species lives in the vicinity of the proposed plant, the Licensing Board is obligated to examine all possible adverse effects upon the species which might result from construction or operation of the plant and to make findings with respect to them. Hartsville, supra, 7 NRC at 361. In this vein, releases from the plant which will not produce significant adverse effects on endangered species clearly "will not jeopardize their continued existence." The Act does not require a finding that there will not be any adverse effects. "Insignificant effects are not proscribed by the Statute." Hartsville, supra, 7 NRC at 360. Likewise, if there are no significant adverse effects on an endangered species, there will be no "harm" to the species under Section 9 of the Act. Id. at 366-367, n.114.

6.7.2 Degree of Proof Needed re Endangered Species Act

The finding that the proposed action will not jeopardize the continued existence of an endangered species must be established by a preponderance of the evidence rather than by clear and convincing proof. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-463, 7 NRC 341, 360 (1978).

6.8 Financial Qualifications

Section 182(a) of the Atomic Energy Act of 1954 does not impose any financial qualifications requirement on license applicants; it merely authorizes the Commission to impose such financial requirements as it may deem appropriate. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 8, 9 (1978). The relevant implementing regulation is 10 CFR § 50.33(f) which is amplified by Appendix C to 10 CFR Part 50. Id.

The "reasonable assurance" requirement set forth in the regulation was adopted to assure that financial conditions did not compromise the applicant's clear self-interest in safety. It contemplates actual inquiry into the applicant's financial qualifications. It is not enough that the applicant is a regulated public utility. A "reasonable assurance" means that the applicant must have a reasonable financing plan in light of relevant circumstances. However, given the history of the present rule and the relatively modest implementing requirements in Appendix C, it does not mean a demonstration of near certainty that an applicant will never be pressed for funds during the course of construction. Seabrook, supra, 7 NRC at 18.

Recent amendments to 10 CFR § 50.33(f) have modified the requirements for financial qualifications review for electric utilities. Effective March 31, 1982, the Commission eliminated entirely the requirements for financial qualifications review for, inter alia, electric utilities applying for construction permits and operating licenses. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-82-63, 16 NRC 571, 594 (1982), citing 47 Fed. Reg. 13750 (March 31, 1982). Illinois Power Co. (Clinton Power Station, Unit No. 1), LBP-82-103, 16 NRC 1603, 1618 (1982), citing, 10 CFR § 2.104(c)(4); 47 Fed. Reg. 13753 (March 31, 1982); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-87-37, 18 NRC 52, 56 (1983). However, the March 31, 1982 amendment was successfully challenged in court and was remanded to the Commission. Georgia Power Co. (Vogtle Nuclear Plant, Units 1 and 2), LBP-84-35, 20 NRC 887, 895 (1984), citing, New England Coalition on Nuclear Pollution v. NRC, 727 F.2d 1127 (D.C. Cir. 1984). On September 12, 1984, the Commission issued new amendments to 10 CFR § 50.33(f) which:

- 1) reinstated financial qualifications review for electric utilities which apply for facility construction permits; and
- 2) eliminated financial qualifications review for electric utilities which apply for operating licenses, if the utility is a regulated public utility or is authorized to set its own rates.

See 49 Fed. Reg. 35747 (September 12, 1984); Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-784, 20 NRC 845, 847 (1984).

Unusual and compelling circumstances are needed to warrant a waiver of the financial qualifications rule. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-83-37, 18 NRC 52, 57 (1983).

6.9 Generic Issues

A generic issue may be defined as one which is applicable to the industry as a whole (e.g., GESMO) or to all reactors or facilities or to all reactors or facilities of a certain type. Current regulations do not deal specifically with generic issues or the manner in which they are to be addressed.

6.9.1 Consideration of Generic Issues in Licensing Proceedings

As a general rule, a true generic issue should not be considered in individual licensing proceedings but should be handled in rulemaking. See, e.g., Duke Power Co. (William B. McGuire Nuclear Station, Units 1 & 2), ALAB-128, 6 AEC 399, 400, 401 (1973); Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-99, 6 AEC 53, 55-56 (1973). The Commission had indicated at least that generic safety questions should be resolved in rulemaking proceedings whenever possible. See Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-74-40, 8 AEC 809, 814-815, clarified, CLI-74-43, 8 AEC 826 (1974). An appellate court has indicated that generic proceedings "are a more efficient forum in which to develop issues without needless repetition and potential for delay." Natural Resources Defense Council v. NRC, 547 F.2d 633 (D.C. Cir. 1976), cert. granted, 97 S. Ct. 1098 (1977). To the same effect, see Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-380, 5 NRC 572 (1977). Nevertheless, it appears that generic issues may properly be considered in individual adjudicatory proceedings in certain circumstances.

For example, an Appeal Board has held that Licensing Boards should not accept, in individual licensing cases, any contentions which are or are about to become the subject of general rulemaking but apparently may accept so-called "generic issues" which are not (or are not about to become) the subjects of rulemaking. Potomac Electric Co. (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-218, 8 AEC 79 (1974). Moreover, if an issue is already the subject of regulations, the publication of new proposed rules does not necessarily suspend the effectiveness of the existing rules. Contentions under these circumstances need not be dismissed unless the Commission has specifically directed that they be dismissed during pendency of the rulemaking procedure. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-72-1A, 15 NRC 43, 45 (1982). The basic criterion is safety and whether there is a substantial safety reason for litigating the generic issue as the rulemaking progresses. In some cases, such litigation probably should be allowed if it appears that the facility in question may be licensed to operate before the rulemaking

can be completed. In such a case, litigation may be necessary as a predicate for required safety findings. In other cases, however, it may become apparent that the rulemaking will be completed well before the facility can be licensed to operate. In that kind of case there would normally be no safety justification for litigating the generic issues, and strong resource management reasons not to litigate. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-107A, 16 NRC 1791, 1809 (1982).

In an operating license proceeding, where a hearing is to be held to consider other issues, Licensing Boards are enjoined, in the absence of issues raised by a party, to determine whether the Staff's resolution of various generic safety issues applicable to the reactor in question is "at least plausible and...if proven to be of substance ...adequate to justify operation." Pennsylvania Power & Light Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291, 311 (1979).

A Licensing Board must refrain from scrutinizing the substance of particular explanations in the Safety Evaluation Report (SER) justifying operation of a plant prior to the resolution of an unresolved generic safety issue. The Board should only look to see whether the generic issue has been taken into account in a manner that is at least plausible and that, if proven to be of substance, would be adequate to justify operation. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), LBP-82-100, 16 NRC 1550, 1559 (1982), citing, Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245 (1978).

As a matter of policy, most evidentiary hearings in NRC proceedings are conducted in the general vicinity of the site of the facility involved. In generic matters, however, when the hearing encompasses distinct, geographically separated facilities and no relationship exists between the highly technical questions to be heard and the particular features of those facilities or their sites, the governing consideration in determining the place of hearing should be the convenience of the participants in the hearing. Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-566, 10 NRC 527, 530-31 (1979).

A Licensing Board does not have to apply the same degree of scrutiny to uncontested generic unresolved safety issues as is applied to issues subject to the adversarial process. A Licensing Board is required to examine the Staff's presentation in the SER on such uncontested issues to determine whether a basis is provided to permit operation of the

facility pending resolution of those issues. A Licensing Board need not make formal findings of fact on these matters as if they were contested issues, but it is required to determine that the relevant generic unresolved safety issues do not raise a "serious safety, environmental, or common defense and security matter" such as to require exercise of the Board's authority under 10 CFR § 2.760a to raise and decide such issues sua sponte. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 445, 465 (1983), citing, Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1110-13 (1983).

6.9.2 Effect of Unresolved Generic Issues

6.9.2.1 Effect of Unresolved Generic Issues in Construction Permit Proceedings

The existence of an unresolved generic safety question does not necessarily require withholding of construction permits since the Commission has available to it the provisions of 10 CFR § 50.109 for backfitting and the procedures of 10 CFR Part 2, Subpart B for imposing new requirements or conditions. Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 & 2), ALAB-291, 2 NRC 404 (1975).

While unresolved generic issues might not preclude issuance of a construction permit, those generic issues applicable to the facility in question must be considered and information must be presented on whether (1) the problem has already been resolved for the reactor under study, (2) there is a reasonable basis for concluding that a satisfactory solution will be obtained before the reactor is put into operation, or (3) the problem will have no safety implications until after several years of reactor operation, and if there is no resolution by then, alternate means will be available to assure that continued operation, if permitted, will not pose an undue risk. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 775 (1977). See also, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-19, 15 NRC 601, 614 (1982).

6.9.2.2 Effect of Unresolved Generic Issues in Operating License Proceedings

An unresolved safety issue cannot be disregarded in individual licensing proceedings merely because the issue also has generic applicability; rather, for an applicant to succeed, there must be some explanation why construction or operation can proceed although an overall solution has not been found. Where issuance of an operating license is involved, the justification for allowing operation may be

more difficult to come by than would be the case where a construction permit is involved. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-491, 8 NRC 245, 248 (1978).

Explanations of why an operating license should be issued despite the existence of unresolved generic safety issues should appear in the Safety Evaluation Report. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-491, 8 NRC 245, 249 (1978).

Where generic unresolved safety issues are involved in an operating license proceeding, for an application to succeed there must be some explanation why the operation can proceed even though an overall solution has not been found. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 445, 472 (1983), affirmed, ALAB-788, 20 NRC 1102, 1135 n.187 (1984). A plant will be allowed to operate pending resolution of the unresolved issues when there is reasonable assurance that the facility can be operated without undue risk to the health and safety of the public. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 445, 472 (1983), affirmed, ALAB-788, 20 NRC 1102, 1135 n.187 (1984).

6.10 Inspection and Enforcement

The Commission has both the duty and the authority to make such investigations and inspections as it deems necessary to protect the public health and safety. Union Electric Co. (Callaway Plant, Units 1 & 2), LBP-78-31, 8 NRC 366, 374 (1978).

Because the atomic energy industry is a pervasively regulated industry, lawful inspections of licensee's activities are within the warrantless search exception for a "closely regulated industry" delineated by the Supreme Court in Marshall v. Barlow's, Inc., 436 U.S. 307 (1978); Union Electric Co. (Callaway Plant, Units 1 & 2), LBP-78-31, 8 NRC 366, 377 (1978). In addition, a licensee's submission to all applicable NRC regulations constitutes advance consent to lawful inspections, and therefore, no warrant is required for such inspections. Callaway, supra, 8 NRC at 377.

Proposed investigation of the discharge by a licensee's contractor of a worker who reported alleged construction problems to the Commission was within the Commission's statutory and regulatory authority to assure public health and safety. Union Electric Co. (Callaway Plant, Units 1 & 2), LBP-78-31, 8 NRC 366, 376 (1978). The Commission should not defer such an inquiry into the discharge of a worker under a proper exercise of its authority to investigate safety related matters merely because such investigation may touch on matters that are the subject of a grievance proceeding between the licensee and the worker. Callaway, supra, 8 NRC at 378.

Refusal by a licensee and contractor to permit a lawful Staff investigation deemed necessary to assure public health and safety is serious enough to warrant the drastic remedy of permit suspension pending submission to investigation, since the refusal interferes with the Commission's duty to assure public health and safety. Callaway, supra, 8 NRC at 378.

Inspections of licensed activities during company-scheduled working hours are reasonable per se. Commission inspections may not be limited to "office hours." In re Radiation Technology, Inc., ALAB-567, 10 NRC 533, 540 (1979).

A search warrant is not needed for inspections of licensed activities. Id. at 538-540.

The NRC Staff's Office of Inspection and Enforcement does inspect construction activities and reports. Where weaknesses or errors which substantially affect safety are detected, the Staff requires the applicant to take appropriate action. Deliberate or careless failure of applicants to adhere to the program is the basis for the imposition of penalties. Illinois Power Co. (Clinton Power Station, Unit No. 1), LBP-82-103, 16 NRC 1603, 1614 (1982).

6.10.1 Enforcement Actions

"[A] licensee may not avoid responsibility for violations because its employees or agents failed to comply with the Commission's rules, regulations or license conditions." Pittsburgh-Des Moines Steel Company, ALJ-78-3, 8 NRC 649, 651 (1978).

The Director of Inspection and Enforcement, subject to requirements that he give licensees written notice of specific violations and consider their responses in deciding whether penalties are warranted, may prefer charges, may demand the payment of penalties, and agree to compromise penalty cases without formal litigation. Additionally, the Director may consult with his Staff privately about the course to be taken. In re Radiation Technology, Inc., ALAB-567, 10 NRC 533, 537 (1979).

The ability of the Director of Inspection and Enforcement to proceed against a licensee by issuing an order imposing civil penalties is not a denial of due process because the licensee was not able to cross-examine the Director to determine he had not been improperly influenced by Staff. The demands of due process do not require a hearing at the initial stage or at any particular point or at more than one point in an administrative proceeding so long as the requisite hearing is held before the final order becomes effective. In re Radiation Technology, Inc., ALAB-567, 10 NRC 533, 536-538 (1979).

A licensee is normally afforded the opportunity to challenge an enforcement action in a public hearing prior to the time an enforcement action takes effect. Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-73-38, 6 AEC 1082, 1083 (1973); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-9, 21 NRC 1118, 1123, (1985). However, the Commission is empowered to make a shutdown order immediately effective where such action is required by the public health, safety, or public interest. Three Mile Island, supra, 21 NRC at 1123-24 n.2. See 10 CFR § 2.202(f), implementing 5 U.S.C. § 558(c).

The Commission is obligated under the law to lift the effectiveness of an immediately effective shutdown order once the concerns which brought about the order have been adequately resolved. Three Mile Island, supra, 21 NRC at 1124. See, e.g., Pan American Airways v. C.A.B., 684 F.2d 31 (D.C. Cir. 1982); Northwest Airlines v. C.A.B., 539 F.2d 846 (D.C. Cir. 1976); Air Line Pilots Ass'n., International v. C.A.B., 458 F.2d 846 (D.C. Cir. 1972), cert. denied, 420 U.S. 972 (1975). This holds true even where Licensing and Appeal Boards' deliberations and decisions as to resumption of operations are pending, provided the issues before the Board do not implicate the public health and safety. Three Mile Island, supra, 21 NRC at 1149.

Where a Board attaches license conditions in an enforcement proceeding, such action does not convert the enforcement proceeding into a license amendment proceeding. Once the Commission establishes a formal adjudicatory hearing in an enforcement case, it need not grant separate hearings on any license conditions that are imposed as a direct consequence of that enforcement hearing. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-9, 21 NRC 1118, 1148 (1985).

Under 10 CFR § 2.202, the NRC Staff is empowered to issue an order to show cause why enforcement action should not be taken when it believes that modification or suspension of a license, or other such enforcement action, is warranted. Under 10 CFR § 2.206, members of the public may request the NRC Staff to issue such an order to show cause. Consolidated Edison Co. of New York (Indian Point, Unit 2) and Power Authority of the State of New York (Indian Point, Unit 3), CLI-83-18, 17 NRC 1006, 1009 (1983).

Allegations about financial difficulties at an operating facility are not by themselves a sufficient basis for action to restrict operations. On the other hand, allegations that defects in safety practices have in fact occurred or are imminent would form a possible basis for enforcement action, whether or not the root cause of the

fault was financial. Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), CLI-83-21, 18 NRC 157, 159-60 (1983).

A Director does not abuse his or her discretion by refusing to take enforcement action based on mere speculation that financial pressures might in some unspecified way undermine the safety of a facility's operation. Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), CLI-83-21, 18 NRC 157, 160 (1983).

6.10.1.1 Civil Penalties

Section 234 of the Atomic Energy Act directs the Commission to afford an opportunity for a hearing to a licensee to whom a notice has been given of an alleged violation. Pittsburgh-Des Moines Steel Company, ALJ-78-3, 8 NRC 649, 653 (1978).

The Commission established detailed procedures and considerations to be undertaken in the assessment of civil penalties by: (1) notice of proposed rulemaking (36 Fed. Reg. 19122 Aug. 26, 1971), and (2) amendment of the Rules of Practice to include the factors which will determine the assessment of civil penalties. (35 Fed. Reg. 16894, Dec. 17, 1970). These two formal actions fulfill the legal requirements for standards utilized in civil penalty proceedings. Radiation Technology, Inc., ALJ-78-4, 8 NRC 655, 663 (1978). See also Pittsburgh-Des Moines Steel Company, ALJ-78-3, 8 NRC 649, 653 (1978).

Under Section 234 of the Atomic Energy Act, 42 U.S.C. § 2282(b), and 10 CFR § 2.205 of the Commission's regulations, a person subject to imposition of a civil penalty must first be given written notice of: (1) the specific statutory, regulatory or license violations; (2) the date, facts, and nature of the act or omission with which the person is charged; and (3) the proposed penalty. The person subject to the fine must then be given an opportunity to show in writing why the penalty should not be imposed. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-82-31, 16 NRC 1236, 1238 (1982).

When a hearing is requested to challenge the imposition of civil penalties, the officer presiding at the hearing, not the Director of Inspection and Enforcement, decides on the basis of the record whether the charges are sustained and whether civil penalties are warranted. In re Radiation Technology, Inc., ALAB-567, 10 NRC 533, 536 (1979).

Civil penalties are not invalidated by the absence of a formally promulgated schedule of fees when the penalties

imposed are within statutory limits and in accord with general criteria published by the Commission. Radiation Technology, supra, 10 NRC at 541.

A civil penalty imposed by the Director of the Office of Inspection and Enforcement and upheld by the Administrative Law Judge, was set aside where the penalty properly should have been mitigated in the absence of an assertion of (1) management malfeasance, misfeasance or nonfeasance, or (2) a failure by the licensee to take prompt and corrective action to obviate a recurrence. In re Atlantic Research Corp., ALAB-542, 9 NRC 611, 618-621 (1979).

The propriety of a civil penalty hinges upon whether it serves a discernible remedial purpose, i.e., whether it might have the effect of deterring future violations of regulatory requirements by the licensee in question or other licensees (or their employees). Civil penalties are outside the bounds of the authorization of Section 234 of the Atomic Energy Act if their purpose or effect is solely punitive. Atlantic Research, supra, 9 NRC 611.

An adjudicatory hearing in a civil penalty proceeding is essentially a trial de novo. The penalty assessed by the I&E Director constitutes the upper bound of the penalty which may be imposed after the hearing but the Administrative Law Judge may substitute his own judgment for that of the Director. In re Atlantic Research Corporation, ALAB-594, 11 NRC 841, 849 (1980).

6.10.1.2 Show Cause Proceedings

(See 6.24)

6.11 Masters in NRC Proceedings

For a discussion of the role of a "master" in NRC proceedings, see Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 759 (1975) and Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-290, 2 NRC 401 (1975). In ALAB-300, the Appeal Board ruled that parties to an NRC proceeding may voluntarily agree among themselves to have a master of their own choosing make certain discovery rulings by which they will abide. In effect, the master's rulings were like stipulations among the parties. The question as to whether the Licensing and Appeal Boards retained jurisdiction to review the master's discovery rulings was not raised in this case. Consequently, the Appeal Board did not reach a decision as to that issue. Davis-Besse, supra, 2 NRC at 768.

More recently, 10 CFR Part 2 has been amended to provide for the use of special assistants to Licensing Boards. Specifically, special assistants may be appointed to take evidence and prepare

a record. With the consent of all parties, the special assistant may take evidence, and prepare a report that becomes a part of the record, subject to appeal to the Licensing Board. 10 CFR § 2.722.

It is within the discretion of the Special Master to hold information confidential if to do so would increase the likelihood of a fair and impartial hearing. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-81-50, 14 NRC 888, 894 (1981).

A Special Master's conclusions are considered as informed advice to the Licensing Board; however, the Board must independently arrive at its own factual conclusions. Where judgment is material to a particular conclusion, the Board must rely on its own collegial consensus. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-82-56, 16 NRC 281, 289 (1982). Pursuant to 10 CFR § 2.722(a)(3), the regulations under which a Special Master may be appointed in NRC proceedings specify that Special Masters' reports are advisory only. The Board alone is authorized by statute, regulation and the notice of hearing to render the initial decision in proceedings. The decision must be rendered upon the Board's own understanding of the reliable, probative and substantial evidence of the record. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-82-56, 16 NRC 281, 288 (1982).

Where the Special Master's conclusions are materially affected by a witness' demeanor, the Licensing Board must give especially careful consideration to whether or not other more objective witness credibility standards are consistent with the Special Master's conclusions. However, the Licensing Board may afford weight to the Special Master's reported direct observations of a witness' demeanor. Three Mile Island, supra, 16 NRC at 289.

6.12 Material False Statements in Applications

(See 1.5.2)

6.13 Materials Licenses

The production, processing and sale of uranium and uranium ore are controlled by the Atomic Energy Act of 1954, as amended. Homestake Mining Co. v. Mid-Continent Exploration Co., 282 F.2d 787, 791 (10th Cir. 1960). Natural uranium and ores bearing it in sufficient concentration constitute "source material" and, when enriched for fabrication into nuclear fuel, become "special nuclear material" within the meaning of the Act. (42 U.S.C. §§ 2014(z) and (aa), 2071, 2091.) Both are expressly subject to Commission regulation (42 U.S.C. §§ 2073, 2093). 10 CFR Parts 40 and 70 specifically provide for the domestic licensing of source and special nuclear material respectively.

In this regard, the NRC has granted a general license to acquire title to nuclear fuel without first obtaining a specific license. Thus, persons may obtain title and own uranium fuel and are free to contract to receive title to such fuel without an NRC license or specific NRC regulatory control. Rochester Gas & Electric Corporation (Sterling Power Project, Nuclear Unit No. 1), ALAB-507, 8 NRC 551, 554-55 (1978). It is only when a person seeks to reduce its contractual ownership to actual possession that regulatory requirements on possession and use must be met and a specific materials license must be obtained. Sterling, *supra*, 8 NRC at 555.

In the case of materials licenses, the Commission has the legal latitude under Section 189a of the Atomic Energy Act to use informal procedures (instead of the formal trial-type hearing specified in Section 554 of the A.P.A.) to fully apprise it of the concerns of a party challenging the licensing action and to provide an adequate record for determining their validity. Kerr-McGee Corporation (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232, 253 (1982), *aff'd sub nom. City of West Chicago v. NRC*, 701 F.2d 632 (7th Cir. 1983); Rockwell International (Energy Systems Group Special Nuclear Materials License No. SNM-21), CLI-83-15, 17 NRC 1001, 1002 (1983); Philadelphia Electric Co. (Limerick Generating Station Units 1 and 2), ALAB-765, 19 NRC 645, 651 (1984). However, the consistent agency practice is for Licensing Boards, already presiding at operating license hearings, to act on requests to raise Part 70 issues involving the same facility. Limerick, *supra*, 19 NRC at 651-52; Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-778, 20 NRC 42, 48 (1984).

While informal procedures may be followed, persons seeking to challenge the materials licensing action still may be required to establish standing under existing agency precedents regarding 10 CFR § 2.714(d). Energy Systems, *supra*, 17 NRC at 1003. In the absence of a valid petition to intervene under 10 CFR §2.714, there is no authority to hold a hearing. Rockwell International Corp. (Energy Systems Group Special Nuclear Materials License No. SNM-21), LBF-83-65, 18 NRC 774, 777-78 (1983).

Notwithstanding the absence of a hearing on an application for a materials license, the Commission's regulations require the Staff to make a number of findings concerning the applicant and its ability to protect the public health and safety before the issuance of the license. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-778, 20 NRC 42, 48 (1984). See 10 C.F.R. §§ 70.23, 70.31. Cf. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 895-96 (1981) (analogous to the regulatory scheme for the issuance of operating licenses under 10 C.F.R. § 50.57), *aff'd sub nom. Fairfield United Action v. NRC*, 679 F.2d 261 (D.C. Cir. 1982).

A 10 CFR Part 70 materials license is an "order" which under 10 CFR § 2.717(b) may be "modified" by a Licensing Board delegated authority to consider a 10 CFR Part 50 operating license.

Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Station), LBP-79-24, 10 NRC 226, 228 (1979).

Final orders on motions pertaining to Part 70 materials licenses issued during an operating license hearing are appealable upon issuance. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-84-16, 19 NRC 857, 876 (1984) aff'd. ALAB-765, 19 NRC 645, 648 n.1 (1984).

A separate environmental impact statement is not required for a Special Nuclear Material (SNM) license to receive new fuel at a new facility. When an environmental impact statement has been done for an operating license application, including the delivery of fuel, there is no need for each component to be analyzed separately on the assumption that a plant may never be licensed to operate. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-38, 18 NRC 61, 65 (1983).

There is no reason to believe that the granting of a Special Nuclear Material (SNM) license should be deferred until after the applicant shows its compliance with local laws. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-38, 18 NRC 61, 65 (1983).

An amendment to a Part 70 application gives rise to the same rights and duties as the original application. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-778, 20 NRC 42, 48 (1984).

6.14 Motions in NRC Proceedings

Provisions with regard to motions in general in NRC proceedings are set forth in 10 CFR § 2.730. Motion practice before the Commission involves only a motion and an answer; movants who do not seek leave to file a reply are expressly denied the right to do so. 10 CFR § 2.730(c). Detroit Edison Co. (Enrico Fermi Atomic Plant, Unit 2), ALAB-469, 7 NRC 470, 471 (1978); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-81-18, 14 NRC 71 (1981).

A moving party has no right of reply to answers in NRC proceedings except as permitted by the presiding officer. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-72, 16 NRC 968, 971 (1982), citing, 10 CFR § 2.730.

Although the Rules of Practice do not explicitly provide for the filing of either objections to contentions or motions to dismiss them, each presiding board must fashion a fair procedure for dealing with such objections to petitions as are filed. The cardinal rule of fairness is that each side must be heard.

Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521, 524 (1979).

Prior to entertaining any suggestions that a contention not be admitted, the proponent of the contention must be given some chance to be heard in response. The intervenors must be heard in response because they cannot be required to have anticipated in the contentions themselves the possible arguments their opponents might raise as grounds for dismissing them. Contentions and challenges to contentions in NRC licensing proceedings are analogous to complaints and motions to dismiss in Federal court. Allens Creek, supra, at 525.

6.14.1 Form of Motion

The requirements with regard to the form and content of motions are set forth in 10 CFR § 2.730(b).

The Appeal Board expects the caption of every filing in which immediate affirmative relief is requested to reference that fact explicitly by adverting to the relief sought and including the word "motion." The movant will not be heard to assert that it has been prejudiced by the Board's failure to take timely action on the motion in the absence of such a reference. Duke Power Company (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-457, 7 NRC 70, 71 (1978).

6.14.2 Responses to Motions

6.14.2.1 Time for Filing Responses to Motions

Unless specific time limits for responses to motions are expressly set out in specific regulations or are established by the presiding adjudicatory board, the time within which responses to motions must be filed is set forth in 10 CFR § 2.730.

If a document requiring a response within a certain time after service is served incompletely (e.g., only part of the document is mailed), 10 CFR § 2.712 would indicate that the time for response does not begin to run since implicit in that rule is that documents mailed are complete, otherwise service is not effective. Consumers Power Company (Midland Plant, Units 1 & 2), ALAB-235, 8 AEC 645, 649 n.7 (1974) (dictum).

6.14.3 Licensing Board Actions on Motions

If a Licensing Board decides to defer indefinitely a ruling on a motion of some importance, "considerations of simple fairness require that all parties be told of that fact." Consumers Power Company (Midland Plant, Units 1 & 2), ALAB-417, 5 NRC 1442, 1444 (1977).

When an applicant for an operating license files a motion for authority to conduct low power testing in a proceeding where the evidentiary record is closed but the Licensing Board has not yet issued an initial decision finally disposing of all contested issues, the Board is obligated to issue a decision on all outstanding issues (*i.e.*, contentions previously litigated) relevant to low power testing before authorizing such testing. See 10 CFR § 50.57(c). Such a motion, however, does not automatically present an opportunity to file new contentions specifically aimed at low power testing or any other phase of the operating license application. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 801 n.72 (1983), review denied, CLI-83-32, 18 NRC 1309 (1983).

6.15 NEPA Considerations

NEPA expanded the Commission's regulatory jurisdiction beyond that conferred by the Atomic Energy Act or the Energy Reorganization Act. Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-247, 8 AEC 936 (1974). NEPA requires the Commission to consider environmental factors in granting, denying or conditioning a construction permit. It does not give the Commission the power to order an applicant to construct a plant at an alternate site or to order a different utility to construct a facility. Nevertheless, the fact that the Commission is not empowered to implement alternatives does not absolve it from its duty to consider them. Natural Resources Defense Council v. Morton, 458 F.2d 827 (D.C. Cir. 1972); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503 (1977).

NEPA does not establish minimal environmental standards; the environmental review mandated entails a balancing of costs and benefits rather than a measuring against absolute environmental standards. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 43 (1977). Pursuant to NEPA, the NRC must make a finding as to the need for the facility or need-for-power in determining whether construction of the facility should be authorized. "Need-for-power" is a shorthand expression for the "benefit" side of the cost-benefit balance NEPA mandates. A nuclear plant's principal "benefit" is the electric power it generates. Hence, absent some "need-for-power," justification for building a facility is problematical. *Id.* at 90.

NEPA requirements apply to license amendment proceedings as well as to construction permit and operating license proceedings. In license amendment proceedings, however, a Licensing Board should not embark broadly upon a fresh assessment of the environmental issues which have already been thoroughly considered and which were decided in the initial decision. Rather, the Board's role in the environmental sphere will be limited to assuring itself that the ultimate NEPA conclusions reached in the initial decision

are not significantly affected by such new developments. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 393 (1978), citing, Georgia Power Company (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 415, (1975).

NEPA does not mandate that environmental issues considered in the construction permit proceedings be considered again in the operating license hearing, absent new information. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1459 (1982). With regard to license amendments, it has been held that the grant of a license amendment to increase the storage capacity of a spent fuel pool is not a major Commission action significantly affecting the quality of the human environment, and therefore, no EIS is required. Public Service Electric and Gas Company, et al. (Salem Nuclear Generating Station, Unit 1), LBP-80-27, 12 NRC 435, 456 (1980); Portland General Electric Company, et al. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 264-268 (1979).

"[T]he Commission is under a dual obligation: to pursue the objectives of the Atomic Energy Act and those of the National Environmental Policy Act. 'The two statutes and the regulations promulgated under each must be viewed in pari materia.'" Tennessee Valley Authority (Phipps Bend Nuclear Plant, Units 1 & 2), ALAB-506, 8 NRC 533, 539 (1978). (emphasis in original) In fulfilling its obligations under NEPA, the NRC may impose upon applicants and licensees conditions designed to minimize the adverse environmental effects of licensed activities. Such conditions may be imposed even on other Federal agencies, such as TVA, which seek NRC licenses, despite the language of Section 271 of the Atomic Energy Act (42 U.S.C. 2018) which states, in part, that nothing in the act "shall be construed to affect the authority of any Federal, State or local agency with respect to the generation, sale, or transmission of electric power through the use of nuclear facilities licensed by the Commission...." Phipps Bend, 8 NRC at 541-544. Unless it was explicitly made exclusive, the authority of other Federal, state or local agencies or government corporations to consider the environmental consequences of a proposed project does not preempt the NRC's authority to condition its permits and licenses pursuant to NEPA. For example, TVA's jurisdiction over environmental matters is not exclusive where TVA seeks a license from a Federal agency, such as NRC, which also has full NEPA responsibilities. Tennessee Valley Authority (Phipps Bend Nuclear Plant, Units 1 and 2), LBP-77-14, 5 NRC 494 (1977).

NEPA directs all Federal agencies to comply with its requirements "to the fullest extent possible." (42 U.S.C. § 4332.) The leading authorities teach that an agency is excused from those NEPA duties only "when a clear and unavoidable conflict in statutory authority exists." Tennessee Valley Authority (Phipps Bend Nuclear Plant, Units 1 and 2), ALAB-506, 8 NRC 533, 545 (1978).

While the authority of other Federal or local agencies to consider the environmental effects of a project does not preempt the NRC's authority with regard to NEPA, the NRC, in conducting its NEPA analysis, may give considerable weight to action taken by another competent and responsible government's authority in enforcing an environmental statute. Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 & 2), LBP-78-28, 8 NRC 281, 282 (1978).

In contrast to safety questions, the environmental review at the operating license stage need not duplicate the construction-permit review, 10 CFR § 51.21. To raise an issue in an operating license hearing concerning environmental matters which were considered at the construction-permit stage, there needs to be a showing either that the issue had not previously been adequately considered or that significant new information has developed after the construction permit review. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 465 (1979).

Consideration by the NRC in its environmental review is not required for the parts of the water supply system which will be used only by a local government agency, however, cumulative impacts from the jointly utilized parts of the system will be considered. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1473, 1475 (1982).

Insofar as environmental matters are concerned, under the National Environmental Policy Act (NEPA) there is no legal basis for refusing an operating license merely because some environmental uncertainties may exist. Where environmental effects are remote and speculative, agencies are not precluded from proceeding with a project even though all uncertainties are not removed. Arizona Public Service Co., et al. (Palo Verde Nuclear Generating Station, Units 1 and 2 and 3), LBP-82-117A, 16 NRC 1964, 1992 (1982), citing, State of Alaska v. Andrus, 580 F.2d 465, 473 (D.C. Cir. 1978), vacated in part, sub nom., Western Oil and Gas Association v. Alaska, 439 U.S. 922 (1982); NRDC v. Morton, 458 F.2d 827, 835, 837-838 (D.C. Cir. 1972).

Environmental uncertainties raised by intervenors in NRC proceedings do not result in a per se denial of the license, but rather are subject to a rule of reason. Arizona Public Service Co., et al. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-82-117A, 16 NRC 1964, 1992 (1982).

6.15.1 Environmental Impact Statements (EIS)

The activities for which environmental statements need be prepared and the procedures for preparation are covered generally in 10 CFR Part 51. For a discussion of the scope of an NRC/NEPA review when the project addressed by that review is also covered by a broader overall programmatic EIS prepared by another Federal agency, see USERDA (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67 (1976).

Neither the Atomic Energy Act, NEPA, nor the Commission's regulations require that there be a hearing on an environmental impact statement. Public hearings are held on an EIS only if the Commission finds such hearings are required in the public interest. 10 CFR § 2.104. Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 625 (1981), citing, Vermont Yankee Nuclear Power Corp. v. NRC, 435 U.S. 519 (1978).

Under the plain terms of NEPA, the environmental assessment of a particular proposed Federal action coming within the statutory reach may be confined to that action together with, inter alia, its unavoidable consequences. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-455, 7 NRC 41, 48 (1978).

The environmental review mandated by NEPA is subject to a rule of reason and as such need not include all theoretically possible environmental effects arising out of an action, but may be limited to effects which are shown to have some likelihood of occurring. This conclusion draws direct support from the judicial interpretation of the statutory command imposing the obligation to make reasonable forecasts of the future. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-455, 7 NRC 41, 48, 49 (1978).

Underlying scientific data and inferences drawn from NEPA through the exercise of expert scientific evaluation may be adopted by the NRC from the NEPA review done by another Federal agency. The NRC must exercise independent judgment with respect to conclusions about environmental impacts based on interpretation of such basic facts. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1467-1468 (1982), citing, Federal Trade Commission v. Texaco, 555 F.2d 862, 881 (D.C. Cir. 1977), cert. denied, 431 U.S. 974 (1977); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC 848, 868 n.65 (1984).

NEPA requires that a Federal agency make a "good faith" effort to predict reasonably foreseeable environmental impacts and that the agency apply a "rule of reason" after taking a "hard look" at potential environmental impacts. But an agency need not have complete information on all issues before proceeding. Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 & 2), LBP-78-26, 8 NRC 102, 141 (1978).

An adequate final environmental impact statement for a nuclear facility necessarily includes the lesser impacts attendant to low power testing of the facility and removes the need for a separate EIS focusing on questions such as

the costs and benefits of low power testing. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 795 (1983); review denied, CLI-83-32, 18 NRC 1309 (1983).

6.15.1.1 Need to Prepare an EIS

Although the determination as to whether to prepare an environmental impact statement falls initially upon the Staff, that determination may be made an issue in an adjudicatory proceeding. Consumers Power Company (Palisades Nuclear Plant, LBP-79-20, 10 NRC 108, 120 (1979).

In the final analysis, the significance of the impact of the project -- in large part an evidentiary matter -- will determine whether a statement must be issued. Palisades, id.

In the case of licensing nuclear power plants, adverse impacts include the impacts of the nuclear fuel cycle. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1076 (1982), citing, Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 539 (1978).

The test of whether benefits of a proposed action outweigh its costs is distinct from the primary question of whether an environmental impact statement is needed because the action is a major Federal action significantly affecting the environment. Virginia Electric Power Co. (Surry Nuclear Power Station, Units 1 & 2), CLI-80-4, 11 NRC 405 (1980).

The Commission has consistently taken the position that individual fuel exports are not "major Federal actions." Westinghouse Electric Corp. (Exports to Philippines), CLI-80-15, 11 NRC 672 (1980).

The fact that risks of other actions or no action are greater than those of the proposed action does not show that risks of the proposed action are not significant so as to require an EIS. Where conflict in the scientific community makes determination of significance of environmental impact problematical, the preferable course is to prepare an environmental impact statement. Virginia Electric Power Co. (Surry Nuclear Power Station, Units 1 & 2), CLI-80-4, 11 NRC 405 (1980).

For an analysis of when an environmental assessment rather than an EIS is appropriate, see Commonwealth Edison Company (Zion Station, Units 1 & 2), LBP-80-7, 11 NRC 245, 249-50 (1980).

The NRC Staff is not required to prepare a complete environmental impact statement if, after performing an initial environmental assessment, it determines that the proposed action will have no significant environmental impact. Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-790, 20 NRC 1450, 1452 n.5 (1984).

A separate environmental impact statement is not required for a Special Nuclear Material (SNM) license. When an environmental impact statement has been done for an operating license application, including the delivery of fuel, there is no need for each component to be analyzed separately on the assumption that a plant may never be licensed to operate. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-38, 18 NRC 61, 65 (1983).

A supplemental Environmental Impact Statement (EIS) or an Environmental Impact Appraisal (EIA) does not have to be prepared prior to the granting of authorization for issuance of a low-power license. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 445, 634 (1983).

When the environmental effects of full-term, full-power operation have already been evaluated in an EIS, a licensing action for limited operation under a 10 CFR § 50.57(c) license that would result in lesser impacts need not be accompanied by an additional impact statement or an impact appraisal. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-81-5, 13 NRC 226 (1981). See also ALAB-728, 17 NRC 777, 795 (1983), review denied, CLI-83-32, 18 NRC 1309 (1983).

It is well-established NEPA law that separate environmental statements are not required for intermediate, implementing steps such as the issuance of a low-power license where an EIS has been prepared for the entire proposed action and there have been no significant changed circumstances. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-84-9, 19 NRC 1323, 1326 (1984), on certification from, ALAB-769, 19 NRC 995 (1984). See Environmental Defense Fund, Inc. v. Andrus, 619 F.2d 1368, 1377 (1980).

The principle stated in the Shoreham and Diablo Canyon cases, supra, is applicable even where an applicant may begin low-power operation and it is uncertain whether the applicant will ever receive a full-power license. In Shoreham, the fact that recent court decisions in effect supported the refusal by the State and local governments to participate in the development of emergency plans was determined not to be a significant change of circumstances which would require the preparation of a supplemental

environmental impact statement to assess the costs and benefits of low-power operation. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-85-12, 21 NRC 1587 (1985).

An environmental impact statement need not be prepared with respect to the expansion of the capacity of a spent fuel pool if the environmental impact appraisal prepared for the project had an adequate basis for concluding that the expansion of a spent fuel pool would not cause any significant environmental impact. Consumers Power Co. (Big Rock Point Plant), LBP-82-78, 16 NRC 1107 (1982).

When a licensee seeks to withdraw an application to expand its existing low-level waste burial site, the granting of the request to withdraw does not amount to a major Federal action requiring a NEPA review. This is true even though, absent an expansion, the site will not have the capacity to accept additional low-level waste. Nuclear Engineering Co., Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-606, 12 NRC 156, 161-163 (1980).

It must at least be determined that there is significant new information before the need for a supplemental environmental statement can arise. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 and 3), LBP-83-36, 18 NRC 45, 49 (1983), citing, Warm Spring Task Force v. Gribble, 621 F.2d 1017, 1023-36 (9th Cir. 1981).

A supplemental environmental statement need not necessarily be prepared and circulated even if there is new information. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 and 3), LBP-83-36, 18 NRC 45, 49-50 (1983), citing, California v. Watt, 683 F.2d 1253, 1268 (9th Cir. 1982). See 40 CFR § 1502.9(c).

6.15.1.2 Scope of EIS

The scope of the environmental statement or appraisal must be at least as broad as the scope of the action being taken. Duke Power Company (Oconee/McGuire), LBP-80-28, 12 NRC 459, 473 (1980).

An agency may authorize an individual, sufficiently distinct portion of an agency plan without awaiting the completion of a comprehensive environmental impact statement on the plan so long as the environmental treatment under NEPA of the individual portion is adequate and approval of the individual portion does not commit the agency to approval of other portions of the plan. Kerr-McGee Corporation (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232, 265 (1982), citing, Kleppe v. Sierra Club, 427 U.S. 390, 407 n.16, 414 n.26 (1976); Peshlakai v. Duncan, 476 F.

Supp. 1247, 1260 (D.D.C. 1979); and Conservation Law Foundation v. GSA, 427 F. Supp. 1369, 1374 (D.R.I. 1977).

In Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 551 (1978), the U.S. Supreme Court embraced the doctrine that environmental impact statements need not discuss the environmental effects of alternatives which are "deemed only remote and speculative possibilities." The same has been held with respect to remote and speculative environmental impacts of the proposed project itself. Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43 (1981); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-629, 13 NRC 75 (1981); Public Service Electric & Gas Company, (Hope Creek Generating Station, Units 1 and 2), ALAB-518, 9 NRC 14, 38 (1979); Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-705, 16 NRC 1733, 1744 (1982), citing, Vermont Yankee Nuclear Power Corp. v. National Resources Defense Council, 435 U.S. 519, 551 (1978), quoting NRDC v. Morton, 458 F.2d 827, 837-838 (D.C. Cir. 1972). Moot or farfetched alternatives need not be considered under NEPA. Arizona Public Service Co., et al. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-82-117A, 16 NRC 1964, 1992 (1982), citing, Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519 (1978); Natural Resources Defense Council v. Morton 458 F.2d 827, 837-838 (D.C. Cir. 1972); Life of the Land v. Brinegar, 485 F.2d 460 (9th Cir. 1973), cert. denied, 416 U.S. 961 (1974).

The scope of a NEPA environmental review in connection with a facility license amendment is limited to a consideration of the extent to which the action under the amendment will lead to environmental impacts beyond those previously evaluated. Florida Power and Light Co. (Turkey Point Nuclear Generating, Units 3 and 4), LBP-81-14, 13 NRC 677, 684-685 (1981), citing, Consumers Power Co. (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312 (1981).

When major Federal actions are involved, if related activities taken abroad have a significant effect within the U.S., those effects are within NEPA's ambit. However, remote and speculative possibilities need not be considered under NEPA. Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-562, 10 NRC 437, 446 (1979).

The Staff's environmental statement pertaining to a manufacturing license application "...shall be directed at the manufacture of the reactor(s) at the manufacturing site; and, in general terms, at the construction and operation of the reactor(s) at an hypothetical site or

sites having characteristics that fall within the postulated site parameters." 10 CFR Part 50, Appendix M. This relieves the Staff of any responsibility in the manufacturing license application proceeding for locating or evaluating any specific sites for a floating nuclear power plant. Rather, such issues are addressed in proceedings to place these floating plants at particular locations. Offshore Power Systems (Floating Nuclear Power Plants), unpublished ASLB order (September 11, 1978).

6.15.2 Role of EIS

A NEPA analysis of the Government's proposed licensing of private activities is necessarily more narrow than a NEPA analysis of proposed activities which the Government will conduct itself. The former analysis should consider issues which could preclude issuance of the license or which could be affected by license conditions. Kleppe v. Sierra Club, 427 U.S. 390 (1976). It should focus on the proposal submitted by the private party rather than on broader concepts. It must consider other alternatives, however, even if the agency itself is not empowered to order that those alternatives be undertaken. Were there no distinction in NEPA standards between those for approval of private actions and those for Federal actions, NEPA would, in effect, become directly applicable to private parties. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503 (1977).

The impact statement does not simply "accompany" an agency recommendation for action in the sense of having some independent significance in isolation from the deliberative process. Rather, the impact statement is an integral part of the Commission's decision. It forms as much a vital part of the NRC's decisional record as anything else, such that for reactor licensing, for example, the agency's decision would be fundamentally flawed without it. Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-31, 12 NRC 264, 275 (1980).

Where an applicant has submitted a specific proposal, the statutory language of NEPA's Section 102(2)(C) only requires that an environmental impact statement be prepared in conjunction with that specific proposal, providing the Staff with a "specific action of the known dimensions" to evaluate. A single approval of a plan does not commit the agency to subsequent approvals; should contemplated actions later reach the stage of actual proposals, the environmental effects of the existing project can be considered when preparing the comprehensive statement on the cumulative impact of the proposals. Offshore Power Systems (Floating Nuclear Power Plants), LBP-79-15, 9 NRC 653, 658-660 (1979).

6.15.3 Circumstances Requiring Redrafting of Final Environmental Statement (FES)

In certain instances, an FES may be so defective as to require redrafting, recirculation for comment and reissuance in final form. Possible defects which could render an FES inadequate are numerous and are set out in a long series of NEPA cases in the Federal Courts. (See, e.g., Brooks v. Volpe, 350 F. Supp. 269 (W.D. Wash. 1972)(FES inadequate when it suffers from a serious lack of detail and relies on conclusions and assumptions without reference to supporting objective data); Essex City Preservation Assn'n. v. Campbell, 536 F.2d 956, 961 (1st Cir. 1976) (new FES required when there is significant new information or a significant change in circumstances upon which original FES was based); NRDC v. Morton, 458 F.2d 827 (D.C. Cir. 1972)(existence of unexamined but viable alternative could render FES inadequate)). The Appeal Board itself has stated that a new FES may be necessary when the current situation departs markedly from the positions espoused or information reflected in the FES. Allied-General Nuclear Services (Barnwell Nuclear Fuel Plant Separations Facility), ALAB-296, 2 NRC 671 (1975); Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility), LBP-85-3, 21 NRC 244, 252, 256 (1985).

Even though an FES may be inadequate in certain respects, ultimate NEPA judgments with respect to any facility are to be made on the basis of the entire record before the adjudicatory tribunal. Philadelphia Electric Co. (Limerick Generating Station, Units 1 & 2), ALAB-262, 1 NRC 163 (1975). Previous regulations explicitly recognized that evidence presented at a hearing may cause a Licensing Board to arrive at conclusions different from those in an FES, in which event the FES is simply deemed amended pro tanto. Barnwell, *supra*, 2 NRC at 671; Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), LBP-82-100, 16 NRC 1550, 1571 n.20 (1982). Since findings and conclusions of the licensing tribunal are deemed to amend the FES where different therefrom, amendment and recirculation of the FES is not always necessary, particularly where the hearing will provide the public ventilation that recirculation of an amended FES would otherwise provide. Limerick, *supra*, 1 NRC at 163. Defects in an FES can be cured by the receipt of additional evidence subsequent to issuance of the FES. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 and 3), LBP-83-36, 18 NRC 45, 47 (1983). See Ecology Action v. AEC, 492 F.2d 998, 1000-02 (2nd Cir. 1974); Florida Power and Light Co. (Turkey Point Nuclear Generating Station, Units 3 and 4), ALAB-660, 14 NRC 987, 1013-14 (1981); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-262, 1 NRC 163, 195-97 (1975).

Such modification of the FES by Staff testimony or the Licensing Board's decision does not normally require recirculation of the FES. Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 372 (1975), unless the modifications are truly substantial. Barnwell, supra, 2 NRC at 671; Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-84-31, 20 NRC 446, 553 (1984); Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility) LBP-85-3, 21 NRC 244, 252, 256 (1985).

Two Courts of Appeals have approved the Commission's rule that the FES is deemed modified by subsequent adjudicatory tribunal decisions. Citizens for Safe Power v. NRC, 524 F.2d 1291, 1294, n.5 (D.C. Cir. 1975); Ecology Action v. AEC, 492 F.2d 998, 1001-02 (2nd Cir. 1974); Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), CLI-78-1, 7 NRC 1, 29, n.43 (1978). See also New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 94 (1st Cir. 1978).

If the changes contained in an errata document for an FES do not reveal an obvious need for a modification of plant design or a change in the outcome of the cost-benefit analysis, the document need not be circulated or issued as a supplemental FES. Nor is it necessary to issue a supplemental FES when timely comments on the DES have not been adequately considered. The Licensing Board may merely effect the required amendment of the FES through its initial decision. Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), LBP-77-21, 5 NRC 684 (1977); Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 and 3), LBP-83-36, 18 NRC 45, 47 (1983).

Similarly, there is no need for a supplemental impact statement and its circulation for public comment where the changes in the proposed action which would be evaluated in such a supplement mitigate the environmental impacts, although circulation of a supplement may well be appropriate or necessary where the change has significant aggravating environmental impacts. Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), CLI-7-81, 7 NRC 1, 28-29 (1978).

NEPA does not require the staff of a Federal agency conducting a NEPA review to consider the record, as developed in collateral State proceedings, concerning the environmental effects of the proposed Federal action. Failure to review the State records prior to issuing an FES, therefore, is not grounds for requiring preparation and circulation of a supplemental FES. Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), LBP-77-21, 5 NRC 684 (1977).

A proposed shift in ownership of a plant with no modification to the physical structure of the facility does not by itself cast doubt on the benefit to be derived from the plant such as to require redrafting and recirculating the EIS. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-459, 7 NRC 179, 184 (1978).

The Staff's environmental evaluation is not deficient merely because it contains only a limited discussion of facility decommissioning alternatives. There is little value in considering at the operating license stage what method of decommissioning will be most desirable many years in the future in light of the knowledge which will have been accumulated by that time. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-179, 7 AEC 159, 178 at n.32 (1974).

For a more recent case discussing recirculation of an FES, see Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 786 (1979).

6.15.3.1 Effect of Failure to Comment on Draft Environmental Statement (DES)

Where an intervenor received and took advantage of an opportunity to review and comment on a DES and where his comments did not involve the Staff's alternate site analysis and did not bring sufficient attention to that analysis to stimulate the Commission's consideration of it, the intervenor will not be permitted to raise and litigate, at a late stage in the hearings, the issue as to whether the Staff's alternate site analysis was adequate, although he may attack the conclusions reached in the FES. Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-366, 5 NRC 39, 66-67 (1977), aff'd as modified, CLI-77-8, 5 NRC 503 (1977).

Since the public is afforded early opportunity to participate in the NEPA review process, imposition of a greater burden for justification for changes initiated by untimely comments is appropriate. Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), CLI-77-8, 5 NRC 503, 539 (1977).

Comments on a DES which fail to meet the standards of CEQ Guidelines (40 CFR § 1500.9(e)) on responsibilities of commenting entities to assist the Staff need not be reviewed by the Staff. Thus, where comments which suggest that the Staff consider collateral State proceedings on the environmental effects of a proposed reactor do not specify the parts of the collateral proceedings which should be considered and the parts of the DES which should

be revised, the Staff need not review the collateral proceedings. Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), LBP-77-21, 5 NRC 684 (1977).

6.15.3.2 Stays Pending Remand for Inadequate EIS

Where judicial review disclosed inadequacies in an agency's environmental impact statement prepared in good faith, a stay of the underlying activity pending remand does not follow automatically. Whether the project need be stayed essentially must be decided on the basis of (1) a traditional balancing of the equities, and (2) a consideration of any likely prejudice to further decisions that might be called for by the remand. Consumers Power Company (Midland Plant, Units 1 & 2), ALAB-395, 5 NRC 772, 784-785 (1977).

6.15.4 Alternatives

Perhaps the most important environmentally related task the Staff has under NEPA is to determine whether an application should be turned down because there is some other site at which the plant ought to be located. No other environmental question is both so significant in terms of the ultimate outcome and so dependent upon facts particular to the application under scrutiny. Consequently, the Appeal Board expects the Staff to take unusual care in performing its analysis and in disclosing the results of its work to the public. Florida Power & Light Company (St. Lucie Nuclear Power Plant, Unit 2), ALAB-435, 6 NRC 541, 543, 544 (1977).

A hard look for a superior alternative is a condition precedent to a licensing determination that an applicant's proposal is acceptable under NEPA. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 513 (1978). When NEPA requires an EIS, the Commission is obliged to take a harder look at alternatives than if the proposed action were inconsequential. Florida Power and Light Co. (Turkey Point Nuclear Generating, Units Nos. 3 and 4), ALAB-660, 14 NRC 987, 1005-1006 (1981), citing, Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263 (1979). In fact the NEPA mandate that alternatives to the proposed licensing action be explored and evaluated does not come into play where the proposed action will neither (1) entail more than negligible environmental impacts, nor (2) involve the commitment of available resources respecting which there are unresolved conflicts. Portland General Electric Company, et al. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 265-266 (1979).

NEPA was not intended merely to give the appearance of weighing alternatives that are in fact foreclosed. Pending completion of sufficient comparison between an applicant's proposed site and others, in situations where substantial work has already taken place, the Commission can preserve the opportunity for a real choice among alternatives only by suspending outstanding construction permits. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), CLI-78-14, 7 NRC 952, 958-959 (1978).

Despite the importance of alternate site considerations, where all parties have proceeded since the inception of the proceeding on the basis that there was no need to examine alternate sites beyond those referred to in the FES, a party cannot insist at the "eleventh hour" that still other sites be considered in the absence of a compelling showing that the newly suggested sites possess attributes which establish them to have greater potential as alternatives than the sites already selected as alternatives. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-495, 8 NRC 304, 306 (1978).

A party seeking consideration at an advanced stage of a proceeding of a site other than the alternate sites already explored in the proceeding must at least provide information regarding the salient characteristics of the newly suggested sites and the reasons why these characteristics show that the new sites might prove better than those already under investigation. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-499, 8 NRC 319, 321 (1978).

The fact that a possible alternative is beyond the Commission's power to implement does not absolve the Commission of any duty to consider it, but that duty is subject to a "rule of reason". Factors to be considered include, distance from site to load center, institutional and legal obstacles and the like. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 486 (1978).

Under NEPA, there is no need for Boards to consider economically better alternatives, which are not shown to also be environmentally preferable. No study of alternatives is needed under NEPA unless the action significantly affects the environment (§ 102(2)(c)) or involves an unresolved conflict in the use of resources (§ 102(2)(e)). Where an action will have little environmental effect, an alternative could not be materially advantageous. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 456-458 (1980).

NEPA does not require the NRC to choose the environmentally preferred site. NEPA is primarily procedural, requiring the NRC to take a hard look at environmental consequences and alternatives. Rochester Gas & Electric Corp., et al. (Sterling Power Project, Nuclear Unit No. 1), CLI-80-23, 11 NRC 731, 736 (1980).

The application of the Commission's "obviously superior" standard for alternative sites (see 6.15.4.1 infra) does not affect the Staff's obligation to take the hard look. The NRC's "obviously superior" standard is a reasonable exercise of discretion to insist on a high degree of assurance that the extreme action of denying an application is appropriate in view of inherent uncertainties in benefit-cost analysis. Sterling, supra, at 735.

Whether or not the parties to a particular licensing proceeding may agree that none of the alternatives (in Seabrook, alternative sites) to the proposal under consideration is preferable, based on a NEPA cost-benefit balance, it remains the Commission's obligation to satisfy itself, that that is so. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-557, 10 NRC 153, 155 (1979).

The scope of a NEPA environmental review in connection with a facility license amendment is limited to a consideration of the extent to which the action under the amendment will lead to environmental impacts beyond those previously evaluated. Florida Power and Light Co. (Turkey Point Nuclear Generating, Units 3 and 4), LBP-81-14 13 NRC 677, 684-85 (1981), citing, Consumers Power Co. (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312 (1981). The consideration of alternatives in such a case does not include alternatives to the continued operation of the plant, even though the amendment might be necessary to continued reactor operation. Turkey Point, supra.

Issues concerning alternative energy sources in general may no longer be considered in operating license proceedings. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 527 (1982). In general, the NRC's environmental evaluation in an operating license proceeding will not consider need for power, alternative energy sources, or alternative sites. 10 CFR §§ 51.95, 51.106.

6.15.4.1 Obviously Superior Standard for Site Selection

The standard for approving a site is acceptability, not optimality. Public Service Co. of N.H. (Seabrook Station, Units 1 & 2), CLI-77-8, 5 NRC 503 (1977). Due to the more extensive environmental studies made of the proposed site

in comparison to alternate sites, more of the environmental costs of the selected site are usually discovered. Upon more extensive analysis of alternate sites, additional cost will probably be discovered. Moreover, a Licensing Board can do no more than accept or reject the application for the proposed site; it cannot ensure that the applicant will apply for a construction permit at the alternate site. For these reasons, a Licensing Board should not reject a proposed site unless an alternate site is "obviously superior" to the proposed site. Id. at 526. Standards of acceptability, instead of optimality, apply to approval of plant designs as well. Id. In view of all of this, an applicant's selection of a site may be rejected on the grounds that a preferable alternative exists only if the alternative is "obviously superior" Florida Power & Light Company (St. Lucie Nuclear Power Plant, Unit 2), ALAB-435, 6 NRC 541 (1977). For a further discussion of the "obviously superior" standard with regard to alternatives, see Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 67, 78 (1977).

The Commission's obviously superior standard for alternate sites has been upheld by the Court of Appeals for the First Circuit. The Court held that, given the necessary imprecision of the cost-benefit analysis and the fact that the proposed site will have been subjected to closer scrutiny than any alternative, NEPA does not require that the single best site for environmental purposes be chosen. New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 95 (1st Cir. 1978).

A Licensing Board determination that none of the potential alternative sites surpasses a proposed site in terms of providing new generation for areas most in need of new capacity cannot of itself serve to justify a generic rejection of all those alternative sites on institutional, legal, or economic grounds. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 491 (1978).

To establish that no suggested alternative sites are "obviously superior" to the proposed site, there must be either (1) an adequate evidentiary showing that the alternative sites should be generically rejected or (2) sufficient evidence for informed comparisons between the proposed site and individual alternatives. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 498 (1978).

It is not enough for rejection of all alternative sites to show that a proposed site is a rational selection from the standpoint solely of system reliability and stability.

For the comparison to rest on this limited factor, it would also have to be shown that the alternative sites suffer so badly on this factor that no need existed to compare the sites from other standpoints. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 497 (1978).

For application of the "obviously superior" standard, see Rochester Gas and Electric Corporation, et al. (Sterling Power Project, Nuclear Unit No. 1), ALAB-502, 8 NRC 383, 393-399 (1978), particularly at 8 NRC 397 where the Appeal Board equates "obviously" to "clearly and substantially."

6.15.4.2 Standards for Conducting Cost-Benefit Analysis Related to Alternatives

If, under NEPA, the Commission finds that environmentally preferable alternatives exist, then it must undertake a cost-benefit balancing to determine whether such alternatives should be implemented. Florida Power and Light Co. (Turkey Point Nuclear Generating, Units No. 3 and 4), ALAB-660, 14 NRC 987, 1004 (1981), citing, Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155 (1978).

Neither the NRC Staff nor a Licensing Board is limited to reviewing only those alternate sites unilaterally selected by the applicant. To do so would permit decisions to be based upon "sham" alternatives elected to be identified by an applicant and would often result in consideration of something less than the full range of reasonable alternatives that NEPA contemplates. The adequacy of the alternate site analysis performed by the Staff remains a proper subject of inquiry by the Licensing Board, notwithstanding the fact that none of the alternatives selected by the applicant proves to be "obviously superior" to the proposed site. Tennessee Valley Authority (Phipps Bend Nuclear Plant, Units 1 & 2), LBP-77-60, 6 NRC 647, 659 (1977). Nevertheless, the NEPA evaluation of alternatives is subject to a "rule of reason" and application of that rule "may well justify exclusion or but limited treatment" of a suggested alternative. Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 100 (1977), citing, CLI-77-8, 5 NRC 503, 540 (1977).

In Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), CLI-77-8, 5 NRC 503 (1977), the Commission set forth standards for determining whether, in connection with conducting a second cost-benefit analysis to consider alternate sites, the Licensing Board should account for nontransferable investments made at the previously approved site. Where the earlier

environmental analysis of the proposed site had been soundly made, the projected costs of construction at the alternate site should take into account nontransferable investments in the proposed site. Where the earlier analysis lacked integrity, prior expenditures in the proposed site should be disregarded. Seabrook, supra at 5 NRC 533-536.

Population is one -- but only one -- factor to be considered in evaluating alternative sites. All other things being equal, it is better to place a plant farther from population concentrations. The population factor alone, however, usually cannot justify dismissing alternative sites which meet the Commission's regulations. Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 510 (1978).

In alternative site considerations, the presence of an existing reactor at a particular site where the proposed reactor might be built is significant, but not dispositive. Rochester Gas and Electric Corporation, et al. (Sterling Power Project, Nuclear Unit No. 1), ALAB-502, 8 NRC 383, 394-395 (1978).

In assessing the environmental harm associated with land clearance necessary to build a nuclear facility, one must look at what is being removed -- not just how many acres are involved. Sterling, supra, 8 NRC at 395.

In considering the economic costs of building a facility at an alternative site, the costs of replacement power which might be required by reason of the substitution at a late date of an alternate site for the proposed site may be considered. Rochester Gas and Electric Corporation, et al. (Sterling Power Project, Nuclear Unit No. 1), ALAB-502, 8 NRC 383, 394 (1978). However, where no alternative site is "obviously superior" from an environmental standpoint, there is no need to consider this "delay cost" factor. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 533-536 (1977); Sterling, supra at 8 NRC 398. Indeed, unless an alternative site is shown to be environmentally superior, comparisons of economic costs are irrelevant. Sterling, supra at 8 NRC 395, n.25.

6.15.5 Need for Facility

Pursuant to NEPA, the NRC must make a finding as to the need for the facility or need for power in determining whether construction of the facility should be authorized. "Need-for-power" is a shorthand expression for the "benefit" side of the cost-benefit balance NEPA mandates. A nuclear plant's principal "benefit" is the electric power it

generates. Hence, absent some "need-for-power," justification for building a facility is problematical. Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 90 (1977). For a further discussion of "need for facility," see Section 3.7.3.2..

NEPA does not foreclose reliance, in resolution of "need-of-power" issues, on the judgment of local regulatory bodies that are charged with the responsibility to analyze future electrical demand growth, at least where the forecasts are not facially defective, are explained on a detailed record, and a principal participant in the local proceeding has been made available for examination in the NRC proceeding. Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-490, 8 NRC 234, 241 (1978).

The general rule applicable to cases involving differences or changes in demand forecasts is not whether the utility will need additional generating capacity but when. Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683, 691 (1980).

The standard for judging the "need-for-power" is whether a forecast of demand is reasonable and additional or replacement generating capacity is needed to meet that demand. Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-490, 8 NRC 234, 237 (1978).

For purposes of NEPA, need-for-power and alternative energy source issues are not to be considered in operating license proceedings for nuclear power plants. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 527-528 (1982). In general, the NRC's environmental evaluation in an operating license proceeding will not consider need for power, alternative energy sources, or alternative sites. 10 CFR §§ 51.95, 51.106.

6.15.6 Cost-Benefit Analysis Under NEPA

The NEPA cost-benefit analysis considers the costs and benefits to society as a whole. Rather than isolate the costs or benefits to a particular group, overall benefits are weighed against overall costs. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 391 (1978).

A cost-benefit analysis should include the consideration and balancing of qualitative as well as quantitative impacts. Those factors which cannot reasonably be quantified should be considered in qualitative terms. Kerr-McGee

Chemical Corp. (West Chicago Rare Earths Facility), LBP-84-42, 20 NRC 1296, 1329-1330 (1984), citing, Statement of Considerations for 10 CFR Part 51, 49 Fed. Reg. 9363, (March 12, 1984).

In weighing the costs and benefits of a facility, adjudicatory boards must consider the time and resources that have already been invested if the facility has been partially completed. Money and time already spent are irrelevant only where the NEPA comparison is between completing the proposed facility on the one hand and abandoning that facility on the other. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-392, 5 NRC 759 (1977). In comparing the costs of completion of a facility at the proposed site to the costs of building the facility at an alternate site, the Commission may consider the fact that costs have already been incurred at the proposed site. New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 95-96 (1st Cir. 1978).

Unless a proposed nuclear unit has environmental disadvantages when compared to alternatives, differences in financial cost are of little concern. Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 & 2), LBP-78-26, 8 NRC 102, 161 (1978); Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-82-117A, 16 NRC 1964, 1993 (1982), citing, Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 162 (1978). Only after an environmentally superior alternative has been identified do economic considerations become relevant. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 527 (1982).

A reasonably foreseeable, nonspeculative, substantial reduction in benefits should trigger the need, under NEPA, to reevaluate the cost-benefit balance of a proposed action before further irreversible environmental costs are incurred. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 445, 630-31 (1983).

The NRC considers need-for-power and alternative energy sources (e.g., a coal plant) as part of its NEPA cost-benefit analysis at the construction permit stage for a nuclear power reactor. Carolina Power and Light Co. and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-83-27A, 17 NRC 971, 972 (1983). See Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), 1 NRC 347, 352-72 (1975); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 522 (1977). In the operating license environmental analysis, however, need-for-power and alternative energy

sources are not considered and contentions which directly implicate need-for-power projections and comparisons to coal are barred by the regulations; correlatively, such comparative cost savings may not be counted as a benefit in the Staff's NEPA cost-benefit analysis. Shearon Harris, supra, 17 NRC at 974.

Even if the cost-benefit balance for a plant is favorable, measures may be ordered to minimize particular impacts. Such measures may be ordered without awaiting the ultimate outcome of the cost-benefit balance. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-83-11, 17 NRC 413, 419 (1983).

While the balancing of costs and benefits of a project is usually done in the context of an environmental impact statement prepared because the project will have significant environmental impacts, at least one court has implied that a cost-benefit analysis may be necessary for certain Federal actions which, of themselves, do not have a significant environmental impact. Specifically, the court opined that an operating license amendment derating reactor power significantly could upset the original cost-benefit balance and, therefore, require that the cost-benefit balance for the facility be reevaluated. Union of Concerned Scientists v. AEC, 499 F.2d 1069, 1084-85, (D.C. Cir. 1974).

Sunk costs are as a matter of law not appropriately considered in an operating license cost-benefit balance. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-82-63, 16 NRC 571, 586-87 (1982), citing, Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 534 (1977). Consumers Power Co., (Midland Plant, Units 1 and 2), LBP-82-95, 16 NRC 1401, 1404-1405 (1982).

An adequate final environmental impact statement for a nuclear facility necessarily includes the lesser impacts attendant to low power testing of the facility and removes the need for a separate focusing on questions such as the costs and benefits of low power testing. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 795 (1983); review denied, CLI-83-32, 18 NRC 1309 (1983).

6.15.6.1 Consideration of Specific Costs Under NEPA

When water quality decisions have been made by the EPA pursuant to the Federal Water Pollution Control Act Amendments of 1972 and these decisions are raised in NRC licensing proceedings, the NRC is bound to take EPA's considered decisions at face value and simply to factor them into the

NEPA cost-benefit analysis. Carolina Power & Light Co. (H.B. Robinson, Unit No. 2), ALAB-569, 10 NRC 557, 561-62 (1979).

The environmental and economic costs of decommissioning necessarily comprise a portion of the cost-benefit analysis which the Commission must make. Pennsylvania Power & Light Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291, 313 (1979).

Alternative methods of decommissioning do not have to be discussed. All that need be shown is that the estimated costs do not tip the balance against the plant and that there is reasonable assurance that an applicant can pay for them. Susquehanna, supra, at 314.

6.15.6.1.1 Cost of Withdrawing Farmland from Production

(SEE 3.7.3.5.1)

6.15.6.1.2 Socioeconomic Costs as Affected by Increased Employment and Taxes from Proposed Facility

Increased employment and tax revenue cannot be included on the benefit side in striking the ultimate NEPA cost-benefit balance for a particular plant. But the presence of such factors can certainly be taken into account in weighing the potential extent of the socioeconomic impact which the plant might have upon local communities. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 509 at n.58 (1978).

6.15.7 Consideration of Class 9 Accidents in an Environmental Impact Statement

The ECCS Final Acceptance Criteria as set forth in 10 CFR § 50.46 and Appendix K to 10 CFR Part 50 assume that ECCS will operate during an accident. On the other hand, Class 9 accidents postulate the failure of the ECCS. Thus, on its face, consideration of Class 9 accidents would appear to be a challenge to the Commission's regulations. However, the Commission has squarely held that the regulations do not preclude the use of inconsistent assumptions about ECCS failure for other purposes. Thus, the prohibition of challenges to the regulations in adjudicatory proceedings does not preclude the consideration of Class 9 accidents and a failure of ECCS related thereto in environmental impact statements and proceedings thereon. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 221 (1978).

Because the law does not require consistency in treatment of two parties in different circumstances, the Staff does not violate principles of fairness in considering Class 9 accidents in environmental impact statements for floating but not land based plants. The Staff need only provide a reasonable explanation why the differences justify a departure from past agency practice. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 222 (1978).

In proceedings instituted prior to June, 1980, serious (Class 9) accidents need be considered only upon a showing of "special circumstances." Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 529 (1982); 45 Fed. Reg. 40101 (June 13, 1980). The subsequent Commission requirement that NEPA analysis include consideration of Class 9 accidents (45 Fed. Reg. 40101) cannot be equated with a health and safety requirement. Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), LBP-82-106, 16 NRC 1649, 1664 (1982). The fact that a nuclear power plant is located near an earthquake fault and in an area of known seismic activity does not constitute a special circumstance. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-781, 20 NRC 819, 826-828 (1984), affirming in part (full power license for Unit 1), LBP-82-70, 16 NRC 756 (1982). See also Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 795-796 (1983).

6.15.8 Power of NRC Under NEPA

The Licensing Board is not obliged under NEPA to consider all issues which are currently the subject of litigation in other forums and which may some day have an impact on the amount of effluent available. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-82-45, 15 NRC 1527, 1528, 1530 (1982).

The Commission is not required by NEPA to hold formal hearings on site preparation activities because NEPA did not alter the scope of the Commission's jurisdiction under the Atomic Energy Act. United States Department of Energy, Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 421 (1982), citing, Gage v. United States Atomic Energy Commission, 479 F.2d 1214, 1220 n.19 (D.C. Cir. 1972); 39 Fed. Reg. 14506, 14507 (April 24, 1979).

The National Environmental Policy Act (NEPA) requires that the Commission prepare an environmental impact statement only for major actions significantly affecting the environment. Clinch River, *supra*, at 16 NRC 424.

A Federal agency may consider separately under NEPA the different segments of a proposed Federal action under certain circumstances. Where approval of the segment under consideration will not result in any irreversible or irretrievable commitments to remaining segments of the proposed action, the agency may address the activities of that segment separately. United States Department of Energy, Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 424 (1982).

The NRC Staff may, if it desires, perform a more complete review than the minimum legally required. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-72, 16 NRC 968, 972 (1982).

Compliance with the National Historic Preservation Act does not preclude the need to comply with NEPA with regard to impacts on historic and cultural aspects of the environment. Therefore, noise impacts on proposed historic districts must be evaluated and, if necessary, mitigation measures undertaken. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-83-11, 17 NRC 413, 435 (1983).

6.15.8.1 Powers in General

Commensurate with the Commission's obligation to comply with NEPA in licensing nuclear facilities is an implicit power to impose permit and license conditions indicated by the NEPA analysis.

The Commission may prescribe such regulations, orders and conditions as it deems necessary under any activity authorized pursuant to the Atomic Energy Act of 1954, as amended, and NEPA requires the Commission to exercise comparable regulatory authority in the environmental area. Wisconsin Electric Power Co. (Point Beach, Unit 2), ALAB-82, 5 AEC 350, 352 (1972).

Where necessary to assure that NEPA is complied with and its policies protected, Licensing Boards can and must ignore stipulations among the parties to that effect. Consolidated Edison Co. of N.Y., Inc. (Indian Point Nuclear Generating Station, Unit 3), CLI-75-14, 2 NRC 835 (1975). Beyond this, Licensing Boards have independent responsibilities to enforce NEPA and may raise environmental issues *sua sponte*. Tennessee Valley Authority (Hartsville Nuclear Power Plant, Units 1A, 2A, 1B & 2B), ALAB-380, 5 NRC 572 (1977).

In Consolidated Edison Co. of N.Y., Inc. (Indian Point Station, Unit 2), ALAB-399, 5 NRC 1156 (1977), the Appeal

Board dealt with the question as to the degree to which NEPA allows the NRC to preempt State and local regulation with respect to nuclear facilities. Therein, the Appeal Board held that the Federal doctrine of preemption invalidates local zoning decisions that substantially obstruct or delay the effectuation of an NRC license condition imposed by the Commission pursuant to NEPA. Id. at 1169-1170.

The Appeal Board stated:

...NEPA gave this Commission both the power and the duty to interpret and administer with the Atomic Energy Act and its own regulations in accordance with the policies of NEPA. Among the policies of NEPA are to 'fulfill the responsibilities of each generation as trustee of the environment for succeeding generations,' to 'attain the widest range of beneficial uses of the environment without degradation....,' and to 'enhance the quality of renewable resources....' ...State or local regulation is preempted where it 'produces a result inconsistent with the objective of the Federal statute,' where it 'frustrates the full effectiveness of Federal law,' or where it 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' ... (footnotes omitted). 5 NRC 1169.

However, the Appeal Board also indicated that, where a question is presented as to whether State or local regulations relating to alteration of a nuclear power plant are preempted under NEPA, the NRC should refrain from ruling on that question until regulatory action has been taken by the State or local agency involved. Id. at 1170. To the same effect in this regard is Consolidated Edison Co. of N.Y., Inc. (Indian Point Station, Unit 2), ALAB-453, 7 NRC 31, 35 (1978), where the Appeal Board reiterated that Federal tribunals should refrain from ruling on questions of Federal preemption of State law where a State statute has not yet been definitively interpreted by the State courts or where an actual conflict between Federal and State authority has not ripened.

A State or political subdivision thereof may not substantially obstruct or delay conditions imposed upon a plant's operating license by the NRC pursuant to its NEPA responsibilities, as such actions would be preempted by Federal law. However, a State may refuse to authorize construction of a nuclear power plant on environmental or other grounds and may prevent or halt operation of an already built plant for some valid reason under State law. Consolidated Edison Co. of New York, Inc. (Indian Point Station, Unit 2), ALAB-453, 7 NRC 31, 34-35 (1978).

When another agency has yet to resolve a major issue pertaining to a particular nuclear facility, NRC may allow construction to continue at that facility only if NRC's NEPA analysis encompasses all likely outcomes of the other agency's review. Public Service Company of New Hampshire et al. (Seabrook Station, Units 1 & 2), CLI-78-14, 7 NRC 952, 957 (1978).

A Licensing Board may rule on the adequacy of the FES once it is introduced into evidence and may modify it if necessary. A Licensing Board's authority to issue directions to the NRC Staff regarding the performance of its independent responsibilities to prepare a draft environmental statement is limited. Pennsylvania Power and Light Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-80-18, 11 NRC 906, 909 (1980).

Neither NEPA nor the Atomic Energy Act applies to activities occurring in foreign countries and subject to their sovereign control. Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-562, 10 NRC 437, 445-46 (1979).

6.15.8.2 Transmission Line Routing

Consistent with its interpretation of the Commission's NEPA authority (see Wisconsin Electric Power Co. (Point Beach, Unit 2), ALAB-82, 5 AEC 350 (1972)), the Appeal Board has held that the NRC has the authority under NEPA to impose conditions (i.e., require particular routes) on transmission lines, at least to the extent that the lines are directly attributable to the proposed nuclear facility. Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB-247, 8 AEC 936, 939 (1974). In addition, the Commission has legal authority to review the offsite environmental impacts of transmission lines and to order changes in transmission routes selected by an applicant. Public Service of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 83 (1977).

6.15.8.3 Pre-LWA Activities/Offsite Activities

NEPA and the Commission's implementing regulations prescribe environmentally significant construction activities associated with a nuclear plant, including activities beyond the site boundary, without prior Commission approval. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), CLI-77-1, 5 NRC 1 (1977). A "site," in the context of the Commission's NEPA responsibilities, includes land where the proposed plant is to be located and its necessary accouterments, including transmission lines and access ways. Id. 10 CFR § 50.10(c), which broadly prohibits any substantial action which would

direct the environment of the site prior to Commission approval, can clearly be interpreted to bar, for example, road and railway construction leading to the site, at least where substantial clearing and grading is involved. Id. In those situations where the Commission does approve offsite activities (e.g., through an LWA or a CP), conditions may be imposed to minimize adverse impacts. Id.

6.15.8.4 Relationship to EPA with Regard to Cooling Systems

The NRC may accept and use without independent inquiry EPA's determination of the magnitude of the marine environmental impacts from a cooling system in striking an overall cost-benefit balance for the facility. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), CLI-78-1, 7 NRC 1, 23, 24 (1978). For a discussion of the statutory framework governing the relationship between NRC and EPA in this area, see Seabrook supra 7 NRC at 23-26. Briefly, that relationship in the present setting may be described thusly: EPA determines what cooling system a nuclear power facility may use and NRC factors the impacts resulting from use of that system into the NEPA cost-benefit analysis. Id. 7 NRC at 26.

The NRC's acceptance and use, without independent inquiry, of EPA's determination as to the aquatic impacts of the Seabrook Station (see Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), CLI-78-1, 7 NRC 1, 23, 24 (1978)) was upheld in New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 98 (1st Cir. 1978).

The Commission may rely on final decisions of the Environmental Protection Agency prior to completion of judicial review of such decisions. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), CLI-78-17, 8 NRC 179, 180 (1978).

Although an adverse environmental impact on water quality resulting from a cooling system discharge is an important input in the NEPA cost-benefit balance, a Licensing Board cannot require alteration of a facility's cooling system if that system has been approved by EPA. Carolina Power & Light Co. (H. B. Robinson, Unit 2), LBP-78-22, 7 NRC 1052, 1063-64 (1978).

NRC need not relitigate issue of environmental impacts caused by a particular cooling system when it is bound to accept that cooling system authorized by EPA. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-72, 16 NRC 968, 970 (1982), citing, Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 24 (1978).

6.15.8.5 NRC Power Under NEPA With Regard to the FWPCA

The spread of the Federal responsibility for water quality standards and pollution control among various licensing agencies, which resulted from the reading given NEPA by the Calvert Cliffs court, has been curtailed. That responsibility has shifted to EPA as its exclusive province. Section 511(c)(2) of the FWPCA does not change a licensing agency's obligation to weigh degradation of water quality in its NEPA cost-benefit balance, but the substantive regulation of water pollution is in EPA's hands. Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702, 712-13 (1978).

Section 511(c)(2) of the FWPCA requires that the Commission and the Appeal Board accept EPA's determinations on effluent limitations. Philadelphia Electric Company, et al. (Peach Bottom Atomic Power Station, Unit 3), ALAB-532, 9 NRC 279, 282 (1979).

Section 511(c)(2) of the Clean Water Act does not preclude NRC from considering noise impacts of the cooling water system on the surrounding environment. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-83-11, 17 NRC 413, 419 (1983).

When water quality decisions have been made by the EPA pursuant to the Federal Water Pollution Control Act Amendments of 1972 and these decisions are raised in NRC licensing proceedings, the NRC is bound to take EPA's considered decisions at face value and simply to factor them into the NEPA cost-benefit analysis. Carolina Power & Light Co. (H.B. Robinson, Unit No. 2), ALAB-569, 10 NRC 557, 561-62 (1979).

6.15.9 Spent Fuel Pool Proceedings

A Licensing Board is not required to consider in a spent fuel pool expansion case the environmental effects of all other spent fuel pool capacity expansions. Because pending or past licensing actions affecting the capacity of other spent fuel pools could neither enlarge the magnitude nor alter the nature of the environmental effects directly attributable to the expansion in question, there is no occasion to take into account any such pending or past actions in determining the expansion application at bar. Portland General Electric Company (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 267-68 (1979).

The attempt, in a licensing processing for an individual pool capacity expansion, to challenge the absence of an acceptable generic long-term resolution of the waste management question was precluded in Prairie Island, ALAB-455,

7 NRC 41, remanded sub nom., Minnesota v. Nuclear Regulatory Commission, 602 F.2d 412 (D.C. Cir. 1979), restating the Commission's policy that for the purposes of licensing actions, the availability of offsite spent fuel repositories in the relatively near term should be presumed. Trojan, supra.

The Licensing Board need not consider alternatives to pool capacity expansion in a proposed expansion proceeding, where the environmental effects of the proposed action are negligible. The NEPA mandate that alternatives to the proposed licensing action be explored and evaluated does not come into play where the proposed action will neither (1) entail more than negligible environmental impacts nor (2) involve the commitment of available resources respecting which there are unresolved conflicts. Trojan, supra, at 256-266; Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43 (1981).

In a license amendment proceeding to expand a spent fuel pool, the environmental review for such amendment need not consider the effects of continued plant operation where the environmental status quo will remain unchanged. Consumers Power Co. (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312, 326 (1981), citing, Committee for Auto Responsibility v. Solomon, 603 F.2d 992 (D.C. Cir. 1979), cert. denied, 445 U.S. 915 (1980).

6.16 NRC Staff

6.16.1 Staff Role in Licensing Proceedings

The NRC Staff generally has the final word in all safety matters, not placed into controversy by parties, at the operating license stage. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-680, 16 NRC 127, 143 (1982), citing, South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-663, 14 NRC 1140, 1156 n.31 (1981).

The NRC Staff has a continuing responsibility to assure that all regulatory requirements are met by an applicant and continue to be met throughout the operating life of a nuclear power plant. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-680, 16 NRC 127, 143, 143 n.23 (1982.)

The NRC Staff has the primary responsibility for reviewing all safety and environmental issues prior to the award of any operating license. Houston Lighting and Power Co., et al. (South Texas Project, Units 1 and 2), LBP-82-91, 16 NRC 1364, 1369 (1982).

An operating license may not be issued until the NRC makes the findings specified in 10 CFR § 50.57. It is the Staff's duty to ensure the existence of an adequate basis for each of that section's determinations. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 NRC 1400, 1420 n.36 (1982), citing, South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 895-896 (1981).

The fact that an application for an operating license is uncontested does not mean that an operating license automatically issues. An operating license may not issue unless and until the NRC Staff makes the findings specified in 10 CFR § 50.57, including the ultimate finding that such issuance will not be inimical to the health and safety of the public. Washington Public Power Supply System (WPPSS Nuclear Project 2), ALAB-722, 17 NRC 546, 553 n.8 (1983), citing, South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 895-96 (1981). The same procedure applies under 10 CFR §§ 70.23, 70.31 in the case of an application for a materials license. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-778, 20 NRC 42, 48 (1984).

The NRC Staff may not deny an application without giving the reasons for the denial, and indicating how the application failed to comply with statutory and regulatory requirements. Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility), LBP-85-3, 21 NRC 244, 250 (1985), citing, SEC v. Chenery Corp., 318 U.S. 80, 94 (1943), Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-770, 19 NRC 1163, 1168-69 (1984), 5 U.S.C. § 555(e), 10 CFR § 2.103(b).

In general, the Staff does not occupy a favored position at hearing. It is, in fact, just another party to the proceeding. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 532 (1973). The Staff's views are in no way binding upon the Board and they cannot be accepted without being subjected to the same scrutiny as those of other parties. Consolidated Edison Co. of N.Y., Inc. (Indian Point Nuclear Generating Station, Units 2 & 3), ALAB-304, 3 NRC 1, 6 (1976); Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-268, 1 NRC 383, 399 (1975). In the same vein, the Staff must abide by the Commission's regulations just as an applicant or intervenor must do. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-194, 7 AEC 431, 435 (1974); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-801, 21 NRC 479, 484 (1985). On the other hand, in

certain situations, as where the Staff prepares a study at the express direction of the Commission, the Staff is an arm of the Commission and the primary instrumentality through which the NRC carries out its regulatory responsibilities and its submissions are entitled to greater consideration. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), CLI-76-17, 4 NRC 451 (1976).

In a construction permit proceeding, the NRC Staff has a duty to produce the necessary evidence of the adequacy of the review of unresolved generic safety issues. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 806 (1983), review denied, CLI-83-32, 18 NRC 1309 (1983).

After an order authorizing the issuance of a construction permit has become final agency action, and prior to the commencement of any adjudicatory proceeding on any operating license application, the exclusive regulatory power with regard to the facility lies with the Staff. Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), ALAB-381, 5 NRC 582 (1977). Under such circumstances an adjudicatory board has no authority with regard to the facility or the Staff's regulation of it. In the same vein, after a full-term, full power operating license has issued and the order authorizing it has become final agency action, no further jurisdiction over the license lies with any adjudicatory board. Portland General Electric Co., et al. (Trojan Nuclear Plant), ALAB-451, 6 NRC 889, 891 at n.3 (1977); Duquesne Light Co., et al. (Beaver Valley Power Station, Unit 1), ALAB-408, 5 NRC 1383, 1386 (1977); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 386, aff'd, ALAB-470, 7 NRC 473 (1978).

Prior to issuing an operating license, the Director of Nuclear Reactor Regulation must find that Commission regulations, including those implementing NEPA, have been satisfied and that the activities authorized by the license can be conducted without endangering the health and safety of the public. Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-693, 16 NRC 952, 956 n.7 (1982), citing, 10 CFR § 50.40(d); 10 CFR § 50.57; Northern States Power Co. (Prairie Island Nuclear Generating Power Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 44 (1978), remanded on other grounds sub nom., Minnesota v. Nuclear Regulatory Commission, 602 F.2d 412 (D.C. Cir. 1979).

Licensing Boards lack the power to direct the Staff in the performance of its independent responsibilities and, under the Commission's regulatory scheme, Boards cannot direct

the Staff to suspend review of an application, preparation of an environmental impact statement or work, studies or analyses being conducted or planned as part of the Staff's evaluation of an application. New England Power Co. (NEP, Units 1 & 2), LBP-78-9, 7 NRC 271, 278-79 (1978).

The Staff produces, among other documents, the Safety Evaluation Report (SER) and the Draft and Final Environmental Statements (DES and FES). The studies and analyses which result in these reports are made independently by the Staff, and Licensing Boards have no rule or authority in their preparation. The Board does not have any supervisory authority over that part of the application review process that has been entrusted to the Staff. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 and 3), LBP-83-36, 18 NRC 45, 48-49 (1983), citing, New England Power Co. (NEP Units 1 and 2), LBP-78-9, 7 NRC 271 (1978). See Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 206-07 (1978); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC 848, 865 n.52 (1984).

Although the Licensing Boards and the NRC Staff have independent responsibilities, they are "partners" in implementation of the Commission's policy that decisionmaking should be "both sound and timely," and thus they must coordinate their operations in order to achieve this goal. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 203 (1978).

In an operating license proceeding (with the exception of certain NEPA issues), the applicant's license application is in issue, not the adequacy of the Staff's review of the application. An intervenor thus is free to challenge directly an unresolved generic safety issue by filing a proper contention but it may not proceed on the basis of allegations that the Staff has somehow failed in its performance. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-728, 17 NRC 777, 807 (1983); review denied, CLI-83-32, 18 NRC 1309 (1983).

The general rule that the applicant carries the burden of proof in licensing proceedings does not apply with regard to alternate site considerations. For alternate sites, the burden of proof is on the Staff and the applicant's evidence in this regard cannot substitute for an inadequate analysis by the Staff. Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), ALAB-479, 7 NRC 774, 794 (1978).

§ 6.16.1.1

The Staff plays a key role in assessing an applicant's qualifications. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), ALAB-577, 11 NRC 18, 34 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

The Staff is assumed to be fair and capable of judging a matter on its merits. Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 4 (1980).

When conducting its review of the issues, the Staff should acknowledge differences of opinion among Staff members and give full consideration to views which differ from the official Staff position. Such discussion can often contribute to a more effective treatment and resolution of the issues. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-803, 21 NRC 575, 580-582 n.6 (1985).

An early appraisal of an applicant's capability does not foreclose the Staff from later altering its conclusions. Such an early appraisal would aid the public and the Commission in seeing whether a hearing is warranted. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), ALAB-577, 11 NRC 18, 33-34 (1980), reconsidered, ALAB-581, 11 NRC 233 (1980), modified, CLI-80-12, 11 NRC 514 (1980).

6.16.1.1 Staff Demands on Applicant or Licensee

While the Commission, through the Regulatory Staff, has a continuing duty and responsibility under the Atomic Energy Act of 1954 to assure that applicants and licensees comply with the applicable requirements, Duke Power Co. (William B. McGuire Nuclear Station, Units 1 & 2), ALAB-143, 6 AEC 623, 627 (1974), the Staff may not require an applicant to do more than the regulations require without a hearing. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Power Station), ALAB-191, 7 AEC 431, 445, 447 n.32 (1974).

Because the law does not require consistency in treatment of two parties in different circumstances, the Staff does not violate principles of fairness in considering Class 9 accidents in environmental impact statements for floating but not land based plants. The Staff need only provide a reasonable explanation why the differences justify a departure from past agency practice. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 222 (1978).

6.16.1.2 Staff Witnesses

Except in extraordinary circumstances, a Licensing Board may not compel the Staff to furnish a particular named individual to testify - i.e., the Staff may select its own witnesses. 10 CFR § 2.720(h)(2)(i). However, once a certain individual has appeared as a Staff witness, he may be recalled and compelled to testify further. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 391 (1974). A Board may require Staff witnesses to update their previous testimony on a relevant issue in light of new analyses and information which have been developed on the same subject. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-786, 20 NRC 1087, 1094-1095 n.13 (1984).

The Commission's rules provide that the Executive Director for Operations generally determines which Staff witnesses shall present testimony. An adjudicatory board may nevertheless order other NRC personnel to appear upon a showing of exceptional circumstances, such as a case in which a particular named NRC employee has direct personal knowledge of a material fact not known to the witnesses made available by the Executive Director for Operations. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-715, 17 NRC 102, 104-05 (1983), citing, 10 CFR § 2.720(h)(2)(i); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-802, 21 NRC 490, 500-501 (1985) (Mere disagreement among NRC Staff members is not an exceptional circumstance). See generally, Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 323 (1980).

6.16.1.3 Post Hearing Resolution of Outstanding Matters by the Staff

As a general proposition, issues should be dealt with in the hearings and not left over for later, and possibly more informal, resolution. The post-hearing approach should be employed sparingly and only in clear cases, for example, where minor procedural deficiencies are involved. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1103 (1983), citing, Consolidated Edison Co. of New York (Indian Point Station, Unit No. 2), CLI-74-23, 7 AEC 947, 951 n.8, 952 (1974); accord, Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-298, 2 NRC 730, 736-37 (1975); Washington Public Power Supply System (Hanford No. 2 Nuclear Power Plant), ALAB-113, 6 AEC 251, 252 (1973); Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-84-2, 19 NRC 36, 210 (1984), rev'd on other grounds, ALAB-793, 20 NRC 1591 (1984).

On the other hand, with respect to emergency planning, the Licensing Board may accept predictive findings and post-hearing verification of the formulation and implementation of emergency plans. Byron, supra, 19 NRC at 212, 251-52, citing, Waterford, supra, 17 NRC at 1103-04; Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-808, 21 NRC 1595, 1600 (1985).

Completion of the minor details of emergency plans are a proper subject for post-hearing resolution by the NRC Staff. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-26, 20 NRC 53, 61-62 (1984), citing, Waterford, supra, 17 NRC 1076.

A Licensing Board may refer minor matters which in no way pertain to the basic findings necessary for issuance of a license to the Staff for post hearing resolution. Such referral should be used sparingly, however. Consolidated Edison Co. of N.Y., Inc. (Indian Point Station, Unit 2), CLI-74-23, 7 AEC 947, 951-52 (1974); Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-461, 7 NRC 313, 318 (1978); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-788, 20 NRC 1102, 1159 (1984). Since delegation of open matters to the Staff is a practice frowned upon by the Commission and the Appeal Board, a Licensing Board properly decided to delay issuing a construction permit until it had reviewed a loan guarantee from REA rather than delegating that responsibility to the Staff for post hearing resolution. Marble Hill, supra.

The mere pendency of confirmatory Staff analyses regarding litigated issues does not automatically foreclose Board resolution of those issues. The question is whether the Board has adequate information, prior to the completion of the Staff analyses, on which to base its decision. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-788, 20 NRC 1102, 1171 (1984).

At the same time, it is entirely appropriate for the Staff to resolve matters not at issue in an operating license or amendment proceeding. In such proceedings, once a Licensing Board has resolved any contested issues and any issues which it raises *sua sponte*, the decision as to all other matters which need be considered prior to issuance of an operating license is the responsibility of the Staff alone. Consolidated Edison Co. of N.Y., Inc. (Indian Point, Units 1, 2 & 3), ALAB-319, 3 NRC 188, 190 (1976); Portland General Electric Co. (Trojan Nuclear Plant), ALAB-181, 7 AEC 207, 209 at n.7 (1974). The Licensing Board is neither required nor expected to pass upon all items which the Staff must consider before the operating license is issued. Indian Point, supra, 3 NRC at 190.

6.16.2 Status of Staff Regulatory Guides

Regulatory guides promulgated by the Staff are not regulations, are subject to question in the course of adjudicatory hearings, and, when challenged, are to be regarded merely as the views of one party which cannot serve as evidence of their own validity but must be supported by other sources. Porter County chapter of the Izaak Walton League of America v. AEC, 633 F.2d 1011 (7th Cir. 1976); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-229, 8 AEC 425, 439, rev'd on other gnds., CLI-74-40, 8 AEC 809 (1974); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-217, 8 AEC 61, 68, (1974); Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-216, 8 AEC 13, 28 at n.76 (1974); Consolidated Edison Co. of N.Y., Inc. (Indian Point, Unit 2), ALAB-188, 7 AEC 323, 333 at n.42, rev'd in part on other gnds., CLI-74-23, 7 AEC 947 (1974); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-179, 7 AEC 159, 174 at n.27 (1974). Nevertheless, regulatory guides are entitled to considerable prima facie weight. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-74-40, 8 AEC 809, 811, (1974); clarified as to other matters, CLI-74-43, 8 AEC 826 (1974).

Nonconformance with regulatory guides or Staff positions does not mean that General Design Criteria (G.D.C.) are not met; applicants are free to select other methods to comply with the G.D.C. The G.D.C. are intended to provide engineering goals rather than precise tests by which reactor safety can be gauged. Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 406 (1978).

While it is clear that regulatory guides are not regulations, are not entitled to be treated as such, need not be followed by applicants, and do not purport to represent the only satisfactory method of meeting a specific regulatory requirement, they do provide guidance as to acceptable modes of conforming to specific regulatory requirements. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760 (1977); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-788, 20 NRC 1102, 1161, 1169 (1984). Indeed, the Commission itself has indicated that conformance with regulatory guides is likely to result in compliance with specific regulatory requirements, though nonconformance with such guides does not mean noncompliance with the regulations. Petition for Emergency & Remedial Action, CLI-78-6, 7 NRC 400, 406-07 (1978).

The criteria described in NUREG-0654, referenced in NRC regulations were intended to serve solely as regulatory guidance, not regulatory requirements. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-22, 17 NRC 608, 616 (1983), citing, Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-698, 16 NRC 1290, 1298-99 (1982), rev'd in part on other grounds, CLI-83-22, 18 NRC 299 (1983).

In absence of other evidence, adherence to NUREG-0654 may be sufficient to demonstrate compliance with the regulatory requirements of 10 CFR § 50.47(b). However, such adherence is not required, because regulatory guides are not intended to serve as substitutes for regulations. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-22, 17 NRC 608, 616 (1983), citing, Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-698, 16 NRC 1290, 1298-99 (1982), rev'd in part on other grounds, CLI-83-22, 18 NRC 299 (1983).

Methods and solutions different from those set out in the guides will be acceptable if they provide a basis for the findings requisite to the issuance or continuance of a permit or license by the Commission. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-22, 17 NRC 608, 616 (1983), citing, Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-698, 16 NRC 1290, 1299 (1982), rev'd in part on other grounds, CLI-83-22, 18 NRC 299 (1983); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-788, 20 NRC 1102, 1161 (1984).

6.16.3 Status of Staff Position and Working Papers

Staff position papers have no legal significance for any regulatory purpose and are entitled to less weight than an adopted regulatory guide. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-268, 1 NRC 383 (1975); Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244 (1974). Similarly, an NRC Staff working paper or draft report neither adopted nor sanctioned by the Commission itself has no legal significance for any NRC regulatory purpose. Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), ALAB-355, 4 NRC 397 (1976); Consolidated Edison Co. of N.Y., Inc. (Indian Point, Unit 2), ALAB-209, 7 AEC 971, 973 (1974).

Nonconformance with regulatory guides or Staff positions does not mean that General Design Criteria are not met; applicants are free to select other methods to comply with

the G.D.C. The G.D.C. are intended to provide engineering goals rather than precise tests by which reactor safety can be gauged. Petition for Emergency & Remedial Action, CLI-78-6, 7 NRC 400, 406 (1978).

6.16.4 Status of Standard Review Plan

Where the applicant used criteria "required" by the Staff's Standard Review Plan (NUREG-75/087, § 2.2.3) in determining the probability of occurrence of a postulated accident, it is not legitimate for the Staff to base its position on a denigration of the process which the Staff itself had promulgated. Public Service Electric and Gas Company, Atlantic City Electric Company, (Hope Creek Generating Station, Units 1 and 2), ALAB-518, 9 NRC 14, 29 (1979).

6.16.5 Conduct of NRC Employees

(RESERVED)

6.17 Orders of Licensing and Appeal Boards

6.17.1 Compliance with Board Orders

Compliance with orders of an NRC adjudicatory board is mandatory unless such compliance is excused for good cause. Thus, a party may not disregard a board's direction to file a memorandum without seeking leave of the board after setting forth good cause for requesting such relief. Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-488, 8 NRC 187, 190-91 (1978). Similarly, a party seeking to be excused from participation in a prehearing conference ordered by the board should present its justification in a request presented before the date of the conference. Seabrook, 8 NRC 187 at 191.

A Licensing Board is not expected to sit idly by when parties refuse to comply with its orders. Pursuant to 10 CFR § 2.718, a Licensing Board has the power and the duty to maintain order, to take appropriate action to avoid delay and to regulate the course of the hearing and the conduct of the participants. Furthermore, pursuant to 10 CFR § 2.707, the refusal of a party to comply with a Board order relating to its appearance at a proceeding constitutes a default for which a Licensing Board may make such orders in regard to the failure as are just. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-115, 16 NRC 1923, 1928 (1982).

A party may not simply refuse to comply with a direct Board order, even if it believes the Board decision to have been based upon an erroneous interpretation of the law. A Licensing Board is to be accorded the same respect

as a court of law. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-115, 16 NRC 1923, 1930 and n.5 (1982). See 10 CFR § 2.713(a).

When an issue is admitted into a proceeding in an order of the Board, it becomes part of the law of that case. Parties may use the prior history of a case to interpret ambiguities in a Board order, but no party may challenge the precedential authority of a Board's decision other than in a timely motion for reconsideration. Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-18, 17 NRC 501, 504 (1983).

6.18 Precedent and Adherence to Past Agency Practice

Application of the "law of the case" doctrine is a matter of discretion. When an administrative tribunal finds that its declared law is wrong and would work an injustice, it may apply a different rule of law in the interests of settling the case before it correctly. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-493, 8 NRC 253, 260 (1978).

An Appeal Board does not give stare decisis effect to affirmation of Licensing Board conclusions on legal issues not brought to it by way of an appeal. Duke Power Company (Cherokee Nuclear Station, Units 1, 2 & 3), ALAB-482, 7 NRC 979, 981 at n.4 (1978).

A determination of fact in an adjudicatory proceeding which is necessarily grounded wholly in a nonadversary presentation is not entitled to be accorded generic effect, even if the determination relates to a seemingly generic matter rather than to some specific aspect of the facility in question. Washington Public Power Supply System (WPPSS Nuclear Projects Nos. 3 & 5), ALAB-485, 7 NRC 986, 988 (1978).

Because the law does not require consistency in treatment of two parties in different circumstances, the Staff does not violate principles of fairness in considering Class 9 accidents in environmental impact statements for floating but not land-based plants. The Staff need only provide a reasonable explanation why the differences justify a departure from past agency practice. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 222 (1978).

6.19 Pre-Permit Activities

NEPA and the Commission's implementing regulations proscribe environmentally significant construction activities associated with a nuclear plant, including activities beyond the site boundary, without prior Commission approval. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), CLI-77-1, 5 NRC 1 (1977). A "site" in this context includes land where the proposed plant is to be located and its necessary accouterments,

including transmission lines and access ways. Id. The Commission may authorize certain site-related work prior to issuance of a construction permit pursuant to 10 CFR § 50.10(c) and (e). 10 CFR § 50.10(c), which broadly prohibits any substantial action which would adversely affect the environment of the site prior to Commission approval, can clearly be interpreted to bar, for example, road and railway construction leading to the site, at least where substantial clearing and grading is involved. Wolf Creek, supra.

Commission regulations provide means for an applicant to obtain prelicensing authorization to engage in certain specified construction activities. These include obtaining an exemption from licensing requirements under 10 CFR § 50.12, pleading special circumstances under 10 CFR § 2.758, and demonstrating that proposed activities will have only de minimus or "trivial" environmental effects. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-321, 3 NRC 293 (1976); Washington Public Power Supply System (Nuclear Projects 3 & 5), LBP-77-15, 5 NRC 643 (1977). In those situations where the Commission does approve offsite (through an LWA or CP) or pre-permit (through an LWA) activities, conditions may be imposed to minimize adverse impacts. Kansas Gas & Electric Co., CLI-77-1, 5 NRC 1 (1977).

The limited work authorization procedure under 10 CFR § 50.10(e) (1) and (2) ("LWA-1") and the 10 CFR § 50.12(b) exemption procedure are independent avenues for applicants to begin site preparation in advance of receiving a construction permit. United States Department of Energy, Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 423 (1982).

A request for an exemption from any Commission regulation in 10 CFR Part 50, including the general prohibition on commencement of construction in 10 CFR § 50.10(c), may be granted under 10 CFR § 50.12(a). United States Department of Energy, Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 418 (1982).

The Commission may apply 10 CFR § 50.12 to a first of a kind project. There is no indication in 10 CFR § 50.12 that exemptions for conduct of site preparation activities are to be confined to typical, commercial light water nuclear power reactors. Commission practice has been to consider each exemption request on a case-by-case basis under the applicable criteria in the regulations. There is no indication in the regulations or past practice that an exemption can be granted only if an LWA-1 can also be granted or only if justified to meet electrical energy needs. Clinch River, supra, CLI-82-23, 16 NRC at 419.

In determining whether to grant an exemption pursuant to 10 CFR § 50.12 to allow pre-permit activities the Commission considers the totality of the circumstances and evaluates the exigency of the circumstances in that overall determination. Exigent circumstances have been found where: (1) further delay would deny the public currently needed benefits that would have been provided by timely completion of the facility but were delayed due to external factors, and would also result in additional otherwise avoidable costs; and (2) no alternative relief has been granted (in part) or is imminent. The Commission will weigh the exigent circumstances offered to justify an exemption against the adverse environmental impacts associated with the proposed activities. Where the environmental impacts of the proposed activities are insignificant, but the potential adverse consequences of delay may be severe and an exemption will mitigate the effects of that delay, the case is strong for granting an exemption that will preserve the option of realizing those benefits in spite of uncertainties in the need for prompt action. United States Department of Energy, Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant), CLI-83-1, 17 NRC 1, 4-6 (1983), citing, Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), CLI-74-22, 7 AEC 938 (1974); Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), CLI-76-20, 4 NRC 476 (1976); Washington Public Power Supply System (WPPSS Nuclear Project Nos. 3 and 5), CLI-77-11, 5 NRC 719 (1977).

Use of the exemption authority under 10 CFR § 50.12 has been made available by the Commission only in the presence of exceptional circumstances. A finding of exceptional circumstances is a discretionary administrative finding which governs the availability of an exemption. A reasoned exercise of such discretion should take into account the equities of each situation. These equities include the stage of the facility's life, any financial or economic hardships, any internal inconsistencies in the regulation, the applicant's good-faith effort to comply with the regulation from which the exemption is sought, the public interest in adherence to the Commission's regulations, and the safety significance of the issues involved. These equities do not, however, apply to the requisite findings on public health and safety and common defense and security. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-84-8, 19 NRC 1154, 1156 n.3 (1984); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-84-45, 20 NRC 1343, 1376-1377 (1984). The costs of unusually heavy and protracted litigation may be considered in evaluating financial or economic hardships as an equity in assessing the propriety of an exemption. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-84-45, 20 NRC 1343, 1378-1379 (1984).

Section 10 CFR § 50.12(a) provides that any exemption from the licensing requirements of 10 CFR Part 50 must be authorized by

law, not endanger life or property or the common defense and security, and be in the public interest. For an exemption from 10 CFR § 50.10, the Commission considers the public interest by weighing the factors set out in 10 CFR § 50.12(b). United States Department of Energy, Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 422 (1982).

The public interest criterion for granting an exemption from 10 CFR § 50.10 under 10 CFR § 50.12(b) is a stringent one: exemptions of this sort are to be granted sparingly and only in extraordinary circumstances. Clinch River Breeder Reactor Plant, supra, 16 NRC at 425, 426, citing, Washington Public Power Supply System (WPPSS Nuclear Power Projects Nos. 3 and 5), CLI-77-11, 5 NRC 719 (1977).

6.19.1 Pre-LWA Activity

Unlike authorization of activities under an LWA, pre-LWA activities may be authorized prior to issuance of a partial initial decision on environmental issues. Washington Public Power Supply System (Nuclear Projects 3 & 5), LBP-77-15, 5 NRC 643 (1977). Permission to commence activities preparatory to construction in advance of an LWA can be sought by three different methods. One method is to seek a determination by the Licensing Board that the proposed activities are not barred by 10 CFR § 50.10(c) because their impacts are de minimus (the so-called "trivial impact" standard) or minor and fully redressible.

This is the preferred method when the issues involved are essentially factual. The second method is to proceed in accordance with 10 CFR § 2.758(b) under which a waiver or exemption may be obtained from the Commission if the Board certifies the issue presented in accordance with 10 CFR § 2.758(d). This method should be used when an interpretation or application of a regulation to particular facts is called into question. The third method is to seek an exemption from the Commission under 10 CFR § 50.12. The Commission has stated that this method is extraordinary and emphasized that it should be used sparingly. Washington Public Power Supply System (WPPSS Nuclear Projects 3 & 5), CLI-77-11, 5 NRC 719, 723 (1977).

10 CFR § 50.10(c) permits only that pre-LWA activity with so trivial an impact that it can be safely said that no conceivable harm would have been done to any of the interests sought to be protected by NEPA should the application for the facility ultimately be denied. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-331, 1 NRC 6 (1976), aff'd in part, CLI-77-1, 5 NRC 1 (1977). For purposes of authorization of pre-LWA activity under 10 CFR § 50.10(c), redressibility is a factor to be

considered. Where the potential damage from the pre-LWA activity is fully redressible and the applicant is willing to commit to restoration of the site, a Licensing Board can permit the applicant to proceed accordingly. Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), CLI-77-1, 5 NRC 1 (1977).

The governing standard with regard to pre-LWA activity is "trivial impact," not zero impact. Puget Sound Power & Light Company (Skagit Nuclear Power Project, Units 1 & 2), ALAB-446, 6 NRC 870 (1977), reversing in part LBP-77-61, 6 NRC 674 (1977). The fact that certain activities would entail the removal of some trees which could not be replaced within a short span of time does not necessarily mean that such activities cannot be conducted prior to issuance of an LWA. Id.

The proscriptions in the Wild and Scenic River Act against any form of assistance by a Federal agency in the construction of a water resource project which might have a direct and adverse impact on a river designated under the Act precludes the granting by a Licensing Board of pre-LWA authority for constructing a proposed sewer line to service a proposed nuclear plant where the nuclear plant itself is considered to be a "water resource project." Puget Sound Power & Light Company (Skagit Nuclear Power Project, Units 1 & 2), LBP-77-61, 6 NRC 674, 678 (1977), rev'd in part, ALAB-446, 6 NRC 870 (1977).

6.19.2 Limited Work Authorization

Under 10 CFR § 50.10(e), the Commission may authorize certain site-related pre-permit work which is more substantial than that permitted under 10 CFR § 50.10(c). Prior to granting such "limited work authorization" (LWA), the presiding officer in the proceeding must have made certain environmental findings and, in some instances, health and safety findings. See 10 CFR § 50.10(e)(1) through (3). Notice to all parties of the proposed action is necessary. Carolina Power & Light Co. (Shearon-Harris Nuclear Power Plant, Units 1, 2, 3 & 4), ALAB-184, 7 AEC 229 (1974).

A limited work authorization allows preliminary construction work to be undertaken at the applicant's risk, pending completion of later hearings covering radiological health and safety issues. United States Department of Energy, Project Management Corp., Tennessee Valley Authority (Clinch River Breeder Reactor Plant), ALAB-688, 16 NRC 471, 473 n.1 (1982), citing, 10 CFR § 50.10(e)(1); Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 778 (1979).

The cost-benefit analysis which must be performed prior to issuance of an LWA requires a determination as to whether construction of certain site-related facilities should be permitted prior to issuance of a construction permit but subsequent to a determination resulting from a cost-benefit analysis that the plant should be built. The cost-benefit analysis relevant to issuance of an LWA has been handled generically under 10 CFR § 51.52(b). Thus, the cost-benefit balance required for an LWA need not be specifically performed for each LWA. Rather, once a Licensing Board has made all the findings on environmental and site suitability matters required by Section 51.52(b) and (c), the cost-benefit balancing implicit in those regulations has automatically been satisfied. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-380, 5 NRC 572, 579-80 (1977).

Applicants are not required to have every permit in hand before a Limited Work Authorization can be granted. Public Service Company of Oklahoma (Black Fox Station, Units 1 & 2), LBP-78-26, 8 NRC 102, 123, 129 (1978).

The Board may conduct a separate hearing and issue a partial decision on issues pursuant to NEPA, general site suitability issues specified by 10 CFR § 50.10(e), and certain other possible issues for a limited work authorization. United States Department of Energy, Project Management Corp., Tennessee Valley Authority (Clinch River Breeder Reactor Plant), LBP-83-8, 17 NRC 158, 161 (1983), vacated as moot, ALAB-755, 18 NRC 1337 (1983).

Although the LWA and construction permit aspects of the case are simply separate phases of the same proceeding, Licensing Boards have the authority to regulate the course of the proceeding and limit an intervenor's participation to issues in which it is interested. United States Department of Energy, Project Management Corp., Tennessee Valley Authority (Clinch River Breeder Reactor Plant), ALAB-761, 19 NRC 487, 492 (1984), citing, 10 CFR §§ 2.718 and 2.714(e) and (f).

6.19.2.1 LWA Status Pending Remand Proceedings

It has been held that, where a partial initial decision on a construction permit is remanded by an Appeal Board to the Licensing Board for further consideration, an outstanding LWA may remain in effect pending resolution of the CP issues provided that little consequential environmental damage will occur in the interim. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-335, 3 NRC 830 (1976). On appeal of this decision, however, the Court of Appeals stayed the effectiveness of the

LWA pending alternate site consideration by the Licensing Board on the grounds that it is anomalous to allow construction to take place at one site while the Board is holding further hearings on other sites. Hodder v. NRC, 589 F.2d 1115 (D.C. Cir. 1978).

6.20 Regulations

The proper test of the validity of a regulation is whether its normal and fair interpretation will deny persons their statutory rights. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1047 (1983), citing, American Trucking Association v. United States, 627 F.2d 1313, 1318-19 (D.C. Cir. 1980).

6.20.1 Compliance with Regulations

Applicants and licensees must, of course, comply with the Commission's regulations, but the Staff may not compel an applicant or licensee to do more than the regulations require without a hearing. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-194, 7 AEC 431, 445, 447 at n.32 (1974).

The power to grant exemptions from the regulations has not been delegated to Licensing Boards and such Boards, therefore, lack the authority to grant exemptions. Southern California Edison Co., et al. (San Onofre Nuclear Generating Station, Units 2 & 3), LBP-77-35, 5 NRC 1290, 1291 (1977).

6.20.2 Commission Policy Statements

A Commission policy statement is binding upon the Commission's adjudicatory boards. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1732 n. 9 (1982), citing, Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 51 (1978), remanded on other grounds sub nom., Minnesota v. Nuclear Regulatory Commission, 602 F.2d 412 (D.C. Cir. 1979).

6.20.3 Regulatory Guides

Staff regulatory guides are not regulations and do not have the force of regulations. When challenged by an applicant or licensee, they are to be regarded merely as the views of one party, although they are entitled to considerable prima facie weight. See Section 6.16.2 and cases cited therein. Consumers Power Co. (Big Rock Point Nuclear Plant), ALAB-725, 17 NRC 562, 568 and n.10 (1983); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-22, 17 NRC 608, 616 (1983), citing, Metropolitan

Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-698, 16 NRC 1290, 1298-99 (1982), rev'd in part on other grounds, CLI-83-22, 18 NRC 299 (1983).

In the absence of other evidence, adherence to regulatory guidance may be sufficient to demonstrate compliance with regulatory requirements. Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-698, 16 NRC 1290, 1299 (1982) (rev'd in part on other grounds, CLI-83-22, 18 NRC 299 (1983)), citing, Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 406-407 (1978); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-22, 17 NRC 608, 616 (1983). Generally speaking, however, such guidance is treated simply as evidence of legitimate means for complying with regulatory requirements, and the Staff is required to demonstrate the validity of its guidance if it is called into question during the course of litigation. Three Mile Island Nuclear Station, supra, 16 NRC at 1299, citing, Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-74-40, 8 AEC 809, 811 (1974).

Nonconformance with regulatory guides or Staff positions does not mean that the General Design Criteria (G.D.C.) are not met; applicants are free to select other methods to comply with the G.D.C. The G.D.C. are intended to provide engineering goals rather than precise tests by which reactor safety can be gauged. Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 406 (1978).

Methods and solutions different from those set out in the guides will be acceptable if they provide a basis for the findings requisite to the issuance or continuance of a permit or license by the Commission. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-22, 17 NRC 608, 616 (1983), citing, Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-698, 16 NRC 1290, 1299 (1982), rev'd in part on other grounds, CLI-83-22, 18 NRC 299 (1983).

While it is clear that regulatory guides are not regulations, are not entitled to be treated as such, need not be followed by applicants, and do not purport to represent the only satisfactory method of meeting a specific regulatory requirement, they do provide guidance as to acceptable modes of conforming to specific regulatory requirements. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760 (1977); Fire Protection for Operating Nuclear Power Plants, CLI-81-11, 13 NRC 778 (1981). Indeed, the Commission itself has indicated that conformance with regulatory guides is

likely to result in compliance with specific regulatory requirements, though, as stated previously, nonconformance with such guides does not mean noncompliance with the regulations. Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 406-07 (1978).

Licensees can be required to show they have taken steps to provide equivalent or better measures than called for in regulatory guides if they do not, in fact, comply with the specific requirements set forth in the guides. Consolidated Edison Co. of N.Y. (Indian Point, Unit 2) and Power Authority of the State of N.Y. (Indian Point, Unit 3), LBP-82-105, 16 NRC 1629, 1631 (1982).

6.20.4 Challenges to Regulations

In Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), Comm'n's Mem. & Order, 2 CCH At. Eng. L. Rep. ¶ 11,578.02 (1969), the Commission recognized the general principle that regulations are not subject to amendment in individual adjudicatory proceedings. Under that ruling, now supplanted by 10 CFR § 2.758, challenges to the regulations would be permitted in only three limited situations:

- (1) where the regulation was claimed to be outside the Commission's authority;
- (2) where it was claimed that the regulation was not promulgated in accordance with applicable procedural requirements;
- (3) in the case of radiological safety standards, where it was claimed that particular standards were not within the broad discretion given to the Commission by the Atomic Energy Act to establish.

The Commission directed Licensing Boards to certify the question of the validity of any challenge to it prior to rendering any initial decision. Thus, the Commission adheres to the fundamental principle of administrative law that its rules are not subject to collateral attack in adjudicatory proceedings. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 NRC 2069, 2073 (1982).

No challenge of any kind is permitted, in an adjudicatory proceeding, as to a regulation that is the subject of ongoing rulemaking. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), ALAB-78, 5 AEC 319 (1972); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-57, WASH-1218, 435 (1972). In such a situation, the appropriate forum for deciding a challenge

is the rulemaking proceeding itself. Union Electric Co. (Callaway Plant, Units 1 & 2), ALAB-352, 4 NRC 371 (1976).

The assertion of a claim in an adjudicatory proceeding that a regulation is invalid is barred as a matter of law as an attack upon a regulation of the Commission. Metro-politan Edison Company (Three Mile Island Nuclear Station, Unit 2), ALAB-456, 7 NRC 63, 65 (1978); Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-410, 5 NRC 1398, 1402 (1977). Consequently, under current regulations, there can be no challenge of any kind by discovery, proof, argument, or other means except in accord with 10 CFR § 2.758. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1104 n.44 (1983); Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 804 n.82 (1983), review denied, CLI-83-32, 18 NRC 1309 (1983); Philadelphia Electric Co. (Limerick Generating Station, Units 1 & 2), ALAB-262, 1 NRC 163, 204 (1975); Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-218, 8 AEC 79, 88-89 (1974); Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), LBP-82-92, 16 NRC 1376, 1385, aff'd, ALAB-704, 16 NRC 1725 (1982).

Under Section 2.758, the regulation must be challenged by way of a petition requesting a waiver or exception to the regulation on the sole ground of "special circumstances" (i.e., because of special circumstances with respect to the subject matter of the particular proceeding, application of the regulation would not serve the purposes for which the regulation was adopted. 10 CFR § 2.758(b)). The petition must be accompanied by an affidavit. Other parties to the proceeding may respond to the petition. If the petition and responses, considered together, do not make a prima facie showing that application of the regulation would not serve the purpose intended, the Licensing Board may not go any further. If a prima facie showing is made, then the issue is to be directly certified to the Commission (not to the Appeal Board - 10 CFR § 2.758, n.9) for determination. See Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 804 n.82 (1983), review denied, CLI-83-32, 18 NRC 1309 (1983); Georgia Power Co. (Vogtle Nuclear Plant, Units 1 and 2), LBP-84-35, 20 NRC 887, 890 (1984). In the alternative, any party who asserts that a regulation is invalid may always petition for rule-making under 10 CFR Part 1, Subpart H (§§ 2.800-2.807).

An attack on a Commission regulation is prohibited unless the petitioner can make a prima facie showing of special circumstances such that applying the regulation would not

serve the purpose for which it was adopted. The prima facie showing must be made by affidavit. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), LBP-83-52A, 18 NRC 265, 270 (1983), citing, 10 CFR § 2.758.

To make a prima facie showing under 10 CFR § 2.758 for waiving a regulation, a stronger showing than lack of reasonable assurance has to be made. Evidence would have to be presented demonstrating that the facility under review is so different from other projects that the rule would not serve the purposes for which it was adopted. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-83-49, 18 NRC 239, 240 (1983).

The ECCS Final Acceptance Criteria as set forth in 10 CFR § 50.45 and Appendix K to 10 CFR Part 50 assume that ECCS will operate during an accident. On the other hand, Class 9 accidents postulate the failure of ECCS. Thus, on its face, consideration of Class 9 accidents would appear to be a challenge to the Commission's regulations. However, the Commission has squarely held that the regulations do not preclude the use of inconsistent assumptions about ECCS failure for other purposes. Thus, the prohibition of challenges to the regulations in adjudicatory proceedings does not preclude the consideration of Class 9 accidents and a failure of ECCS related thereto in environmental impact statements and proceedings thereon. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 221 (1978).

6.20.5 Agency's Interpretation of its Own Regulations

The wording of a regulation generally takes precedence over any contradictory suggestion in its administrative history. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 469 (1982).

Where NRC interprets its own regulations and where those regulations have long been construed in a given way, the doctrine of stare decisis will govern absent compelling reasons for a different interpretation; the regulations may be modified, if appropriate, through rulemaking procedures. New England Power Company (NEP Units 1 and 2), Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 & 2), ALAB-390, 5 NRC 733, 741-42 (1977).

6.21 Rulemaking

Rulemaking procedures are covered, in general, in 10 CFR §§ 2.800-2.807, which govern the issuance, amendment and repeal of regulations and public participation therein. It is well established that an agency's decision to use rulemaking or adjudication in

dealing with a problem is a matter of discretion. Fire Protection for Operating Nuclear Power Plants, CLI-81-11, 13 NRC 778, 800 (1981), citing, NAACP v. FPC, 425 U.S. 662, 668 (1976).

The Commission has authority to determine whether a particular issue shall be decided through rulemaking, through adjudicatory consideration, or by both means. Consumers Power Co., (Midland Plant, Units 1 and 2), LBP-82-118, 16 NRC 2034, 2038 (1982), citing F.P.C. v. Texaco, Inc., 377 U.S. 33, 42-44 (1964); United States v. Storer Broadcasting Co., 351 U.S. 192, 202 (1955). In the exercise of that authority, the Commission may preclude or limit the adjudicatory consideration of an issue during the pendency of a rulemaking. Midland, supra, 16 NRC at 2038.

When a matter is involved in rulemaking, the Commission may elect to require an issue which is part of that rulemaking to be heard as part of that rulemaking. Where it does not impose such a requirement, an issue is not barred from being considered in adjudication being conducted at that time. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-82-63, 16 NRC 571, 584-585 (1982); LBP-82-118, 16 NRC 2034, 2037 (1982).

6.21.1 Rulemaking Distinguished from General Policy Statements

While notice and comment procedures are required for rulemaking, such procedures are not required for issuance of a policy statement by the Commission since policy statements are not rules. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-76-14, 4 NRC 163 (1976).

6.21.2 Generic Issues and Rulemaking

The Commission has indicated that, as a rule, generic safety questions should be resolved in rulemaking rather than adjudicatory proceedings. See Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-74-40, 8 AEC 809, 814-15, clarified, CLI-74-43, 8 AEC 826 (1974). In this vein, it has been held that the Commission's use of rulemaking to set ECCS standards is not a violation of due process. Union of Concerned Scientists v. AEC, 499 F.2d 1069, 1081-82 (D.C. Cir. 1974).

It is within the agency's authority to settle factual issues of a generic nature by means of rulemaking. Minnesota v. NRC, 602 F.2d 412, 416-17 (D.C. Cir. 1979) and Ecology Action v. AEC, 492 F.2d 998, 1002 (2d Cir. 1974), cited in Fire Protection for Operating Nuclear Power Plants, CLI-81-11, 13 NRC 778, 802 (1981). An agency's previous use of a case-by-case problem resolution method does not act as a bar to a later effort to resolve generic issues

by rulemaking. Pacific Coast European Conference v. United States, 350 F.2d 197, 205-06 (9th Cir.), cert. denied, 382 U.S. 958 (1965), cited in Fire Protection, *supra*, and the fact that standards addressing generic concerns adopted pursuant to such a rulemaking proceeding affect only a few, or one, licensee(s) does not make the use of rule-making improper. Hercules, Inc. v. EPA, 598 F.2d 91, 118 (D.C. Cir. 1978), cited in Fire Protection, *supra*.

Waiver of a Commission rule is not appropriate for a generic issue. The proper approach when a problem affects nuclear reactors generally is to petition the Commission to promulgate an amendment to its rules under 10 CFR § 2.802. If the issue is sufficiently urgent, petitioner may request suspension of the licensing proceeding while the rulemaking is pending. Cleveland Electric Illuminating Power Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-57, 14 NRC 1037, 1038-39 (1981).

6.22 Research Reactors

10 CFR § 50.22 constitutes the Commission's determination that if more than 50% of the use of a reactor is for commercial purposes, that reactor must be licensed under § 103 of the Atomic Energy Act rather than § 104. Section 104 licenses are granted for research and education, while Section 103 licenses are issued for industrial or commercial purposes. The Regents of the University of California (UCLA Research Reactor), LBP-83-24, 17 NRC 666, 670 (1983).

6.23 Disclosure of Information to the Public

10 CFR § 2.790 deals generally with NRC practice and procedure in making NRC records available to the public. 10 CFR Part 9 specifically establishes procedures for implementation of the Freedom of Information (10 CFR §§ 9.3 to 9.16) and Privacy (10 CFR §§ 9.50, 9.51) Acts.

Under 10 CFR §§ 2.790, hearing boards are delegated the authority and obligation to determine whether proposals of confidentiality filed pursuant to Section 2.790(b)(1) should be granted pursuant to the standards set forth in subsections (b)(2) through (c) of that Section. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-62, 14 NRC 1747, 1755-56 (1981). Pursuant to 10 CFR § 2.718, Boards may issue a wide variety of procedural orders that are neither expressly authorized nor prohibited by the rules. They may permit intervenors to contend that allegedly proprietary submissions should be released to the public. They may also authorize discovery or an evidentiary hearing that is not relevant to the contentions but is relevant to an important pending procedural issue, such as the trustworthiness of a party to receive allegedly proprietary material. However, discovery and hearings not related to contentions are of

limited availability. They may be granted, on motion, if it can be shown that the procedure sought would serve a sufficiently important purpose to justify the associated delay and cost. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-2, 15 NRC 48 (1982).

Under Chrysler Corp. v. Brown, 441 U.S. 281, 60 L.Ed.2d 208, 99 S. Ct. 1705 (1979), neither the Privacy Act nor the Freedom of Information Act gives a private individual the right to prevent disclosure of names of individuals where the Licensing Board elects to disclose. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-81-50, 14 NRC 888, 891 (1981).

In Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-33, 15 NRC 887, 891-892 (1982), the Board ruled that the names and addresses of temporary employees who have worked on a tube-sleeving project are relevant to intervenor's quest for information about quality assurance in a tube-sleeving demonstration project. Since applicants have not given any specific reason to fear that intervenors will harass these individuals, their names should be disclosed so that intervenors may seek their voluntary cooperation in providing information to them.

6.23.1 Freedom of Information Act Disclosure

Under FOIA, a Commission decision to withhold a document from the public must be by majority vote. Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-35, 12 NRC 409, 412 (1980).

While FOIA does not establish new government privileges against discovery, the Commission has elected to incorporate the exemptions of the FOIA into its own discovery rules. Consumers Power Company (Palisades Nuclear Power Facility, ALJ-80-1, 12 NRC 117, 121 (1980).

Section 2.790 of the Rules of Practice is the NRC's promulgation in obedience to the Freedom of Information Act. Palisades, supra, at 120.

Section 2.744 of the Rules of Practice provides that a presiding officer may order production of any record exempt under Section 2.790 if its "disclosure is necessary to a proper decision and the document is not reasonably obtainable from another source." This balancing test weighs the need for a proper decision against the interest in privacy. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-81-50, 14 NRC 888, 892 (1981).

Although 10 CFR § 2.744 by its terms refers only to the production of NRC documents, it also sets the framework for providing protection for NRC Staff testimony where

disclosure would have the potential to threaten the public health and safety. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-83-40, 18 NRC 93, 99 (1983).

The Commission, in adopting the standards of Exemption 5, and the "necessary to a proper decision" as its document privilege standard under 10 CFR § 2.744(d), has adopted traditional work product/executive privilege exemptions from disclosure. Palisades, supra, at 123.

The Government is no less entitled to normal privilege than is any other party in civil litigation. Palisades, supra, at 127.

Any documents in final form memorializing the Director's decision not to issue a notice of violation imposing civil penalties does not fall within Exemption 5. Palisades, supra, at 129.

6.23.2 Privacy Act Disclosure

(RESERVED)

6.23.3 Disclosure of Proprietary Information

10 CFR § 2.790, which deals generally with public inspection of NRC official records, provides exemptions from public inspection in appropriate circumstances. Specifically, Section 2.790(a) establishes that the NRC need not disclose information, including correspondence to and from the NRC regarding issuance, denial, and amendment of a license or permit, where such information involves trade secrets and commercial or financial information obtained from a person as privileged or confidential.

Under 10 CFR § 2.790(b), any person may seek to have a document withheld, in whole or in part, from public disclosure on the grounds that it contains trade secrets or is otherwise proprietary. To do so, he must file an application for withholding accompanied by an affidavit identifying the parts to be withheld and containing a statement of the reasons for withholding. As a basis for withholding, the affidavit must specifically address the factors listed in Section 2.790(b)(4). If the NRC determines that the information is proprietary based on the application, it must then determine whether the right of the public to be fully apprised of the information outweighs the demonstrated concern for protection of the information.

For an affidavit to be exempt from the Board's general authority to rule on proposals concerning the withholding

of information from the public, that affidavit must meet the regulatory requirement that it have "appropriate markings". When the plain language of the regulation requires "appropriate markings", an alleged tradition by which Staff has accepted the proprietary nature of affidavits when only a portion of the affidavits is proprietary is not relevant to the correct interpretation of the regulation. In addition, legal argument may not appropriately be withheld from the public merely because it is inserted in an affidavit, a portion of which may contain some proprietary information. Affidavits supporting the proprietary nature of other documents can be withheld from the public only if they have "appropriate markings". An entire affidavit may not be withheld because a portion is proprietary. The Board may review an initial Staff determination concerning the proprietary nature of a document to determine whether the review has addressed the regulatory criteria for withholding. A party may not withhold legal arguments from the public by inserting those arguments into an affidavit that contains some proprietary information. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-5A, 15 NRC 216 (1982).

6.23.3.1 Protecting Information Where Disclosure is Sought in an Adjudicatory Proceeding

To justify the withholding of information in an adjudicatory proceeding where full disclosure of such information is sought, the person seeking to withhold the information must demonstrate that:

- (1) the information is of a type customarily held in confidence by its originator;
- (2) the information has, in fact, been held in confidence;
- (3) the information is not found in public sources;
- (4) there is a rational basis for holding the information in confidence.

Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-327, 3 NRC 408 (1976).

The Government enjoys a privilege to withhold from disclosure the identity of persons furnishing information about violations of law to officers charged with enforcing the law. Rovario v. United States, 353 U.S. 53, 59 (1957), cited in Houston Power and Lighting Co. (South Texas Project, Units 1 and 2), ALAB-639, 13 NRC 469, 473 (1981). This applies not only in criminal but also civil cases, In re United States, 565 F.2d 19, 21 (1977), cert. denied

sub nom., Bell v. Socialist Workers Party, 436 U.S. 962 (1978), and in Commission proceedings as well, Northern States Power Co. (Monticello Plant, Unit 1), ALAB-16, 4 AEC 435, affirmed by the Commission, 4 AEC 440 (1970); 10 CFR § 2.744(d), § 2.790(a)(7); and is embodied in FOIA, 5 U.S.C. § 552(b)(7)(D). The privilege is not absolute; where an informer's identity is (1) relevant and helpful to the defense of an accused, or (2) essential to a fair determination of a cause (Rovario, supra); it must yield. However, the Appeal Board reversed a Licensing Board's order to the Staff to reveal the names of confidential informants (subject to a protective order) to intervenors as an abuse of discretion, where the Appeal Board found that the burden to obtain the names of such informants is not met by intervenor's speculation that identification might be of some assistance to them. To require disclosure in such a case would contravene NRC policy in that it might jeopardize the likelihood of receiving similar future reports. South Texas, supra.

For a detailed listing of the factors to be considered by a Licensing Board in determining whether certain documents should be classed as proprietary and withheld from disclosure in an adjudicatory proceeding, see Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), ALAB-137, 6 AEC 491, Appendix at 518 (1973) and (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-42, 15 NRC 1307 (1982). If a Licensing Board or an intervenor with a pertinent contention wishes to review data claimed by an applicant to be proprietary, it has a right to do so, albeit under a protective order if necessary. 10 CFR § 2.790(b)(6); Florida Power & Light Company (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-435, 6 NRC 541, 544 n.12 (1977).

Where a party to a hearing objects to the disclosure of information on the basis that it is proprietary in nature and makes out a prima facie case to that effect, it is proper for an adjudicatory board to issue a protective order and conduct further proceedings in camera. If, upon consideration, the Board determined that the material was not proprietary, it would order the material released for the public record. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-807, 21 NRC 1195, 1214-15 (1985). See also Commonwealth Edison Co. (Zion Nuclear Station, Units 1 and 2), ALAB-196, 7 AEC 457, 469 (1974).

Following issuance of a protective order enabling an intervenor to obtain useful information, a Board can defer ruling on objections concerning the public's right to know until after the merits of the case are considered. If an intervenor has difficulties due to failure to participate

in in camera sessions, these cannot affect the Board's ruling on the merits. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-55, 14 NRC 1017 (1981).

Where a demonstration has been made that the rights of association of a member of an intervenor group in the area have been threatened through threats of compulsory legal process to defend contentions, the employment situation in the area is dependent on the nuclear industry, and there is no detriment to applicant's interests by not having the identity of individual members of petitioner organization publicly disclosed, the Licensing Board will issue a protective order to prevent the public disclosure of the names of members of the organizational petitioner. Washington Public Power Supply System, et al. (WPPSS Nuclear Project No. 1), LBP-83-16, 17 NRC 479, 485-486 (1983).

6.23.3.2 Security Plan Information Under 10 CFR § 2.790(d)

Plant security plans are "deemed to be commercial or financial information" pursuant to 10 CFR § 2.790(d). Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-80, 16 NRC 1121, 1124 (1982).

In making physical security plan information available to intervenors, Licensing Boards are to follow certain guidelines. Security plans are sensitive and are subject to discovery in Commission adjudicatory proceedings only under certain conditions: (1) the party seeking discovery must demonstrate that the plan or a portion of it is relevant to its contentions; (2) the release of the plan must (in most circumstances) be subject to a protective order; and (3) no witness may review the plan (or any portion of it) without it first being demonstrated that he possesses the technical competence to evaluate it. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-80-24, 11 NRC 775, 777 (1980).

Intervenors in Commission proceedings may raise contentions relating to the adequacy of the applicant's proposed physical security arrangements. Shoreham, supra, 16 NRC at 1124.

Commission regulations, 10 CFR § 2.790, contemplate that sensitive information may be turned over to intervenors in NRC proceedings under appropriate protective orders. Shoreham, supra, 16 NRC at 1124.

Release of a security plan to qualified intervenors must be under a protective order and the individuals who review the security plan itself should execute an affidavit of non-disclosure. Diablo Canyon, supra, 11 NRC at 778.

Protective orders may not constitutionally preclude public dissemination of information which is obtained outside the hearing process. A person subject to a protective order, however, is prohibited from using protected information gained through the hearing process to corroborate the accuracy or inaccuracy of outside information. Diablo Canyon, supra, 11 NRC at 778.

6.24 Show Cause Proceedings

Under 10 CFR § 2.202, the NRC Staff is empowered to issue an order to show cause why enforcement action should not be taken when it believes that modification or suspension of a license, or other such enforcement action, is warranted. Under 10 CFR § 2.206, members of the public may request the NRC Staff to issue such an order to show cause. Consolidated Edison Co. of New York (Indian Point, Unit 2) and Power Authority of the State of New York (Indian Point, Unit 3), CLI-83-16, 17 NRC 1006, 1009 (1983). Any person at any time may request the Director of Nuclear Reactor Regulation, Director of Nuclear Material Safety and Safeguards, or Director, Office of Inspection and Enforcement, as appropriate, to issue a show cause order for suspension, revocation or modification of an operating license or a construction permit. 10 CFR § 2.206, 10 CFR § 2.202 et seq.

The Director of Nuclear Reactor Regulation, upon receipt of a request to initiate an enforcement proceeding, is required to make an inquiry appropriate to the facts asserted. Provided he does not abuse his discretion, he is free to rely on a variety of sources of information, including Staff analyses of generic issues, documents issued by other agencies and the comments of the licensee on the factual allegations. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 432, 433 (1978).

In reaching a determination on a show cause petition, the Director need not accord presumptive validity to every assertion of fact, irrespective of the degree of substantiation. Nor is the Director required to convene an adjudicatory proceeding to determine whether an adjudicatory proceeding is warranted. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 432 (1978).

The APA, 5 U.S.C 551 et seq., particularly Section 554, and the Commission's regulations, particularly 10 CFR § 2.719, deal specifically with on-the-record adjudication and thus the Staff's participation in a construction permit proceeding does not render it incapable of impartial regulatory action in a subsequent show cause or suspension proceeding where no adjudication has begun. Moreover, in terms of policy, any view which questions the Staff's capabilities in such a situation is contradicted by the structure of nuclear regulation established by the Atomic Energy Act and

20 years experience implementing that statute. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 431, 432 (1978).

The agency alone has power to develop enforcement policy and allocate resources in a way that it believes is best calculated to reach statutory ends. NRC can develop policy that has licensees consent to, rather than contest, enforcement proceedings. A Director may set forth and limit the questions to be considered in a show cause proceeding. Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), CLI-80-10, 11 NRC 438, 441 (1980).

The Commission has broad discretion to allow intervention where it is not a matter of right. Such intervention will not be granted where conditions have already been imposed on a licensee, and no useful purpose will be served by that intervention. Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 442-43 (1980).

In the context of proceedings before the Commission, an order to show cause is a remedial step in dealing with failure to meet required standards of conduct. The Licensing Board denied a petition for a show cause order which did not make allegations of any such failure. Philadelphia Electric Company (Fulton Generating Station, Units 1 and 2), LBP-79-23, 10 NRC 220, 223 (1979).

The Commission's decision that cause existed to start a proceeding by issuing an immediately effective show cause order does not disqualify the Commission from later considering the merits of the matter. No prejudgment is involved, and no due process issue is created. Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 4-5 (1980).

New matters which cannot be raised before a Board because of a lack of jurisdiction may be raised in a petition under 10 CFR § 2.206. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-579, 11 NRC 223, 226 (1980); Union Electric Co. (Callaway Plant, Unit 1), ALAB-750, 18 NRC 1205, 1217 n.39 (1983); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-782, 20 NRC 838, 840 (1984). Where petitioner's case has no discernible relationship to any other pending proceeding involving the same facility, the show cause proceeding set out in 10 CFR § 2.206 must be regarded as the exclusive remedy. Northern Indiana Public Service Company (Bailley Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 570 (1980).

In every case, a petitioner that for some reason cannot gain admittance to a construction permit or operating license hearing, but wishes to raise health, safety, or environmental concerns before the NRC may file a request with the Director of Nuclear Reactor Regulation under 10 CFR § 2.206 asking the Director to

institute a proceeding to address those concerns. The Staff must analyze the technical, legal, and factual basis for the relief requested and respond either by undertaking some regulatory activity, or if it believes no show cause proceeding or other action is necessary, by advising the requestor in writing of reasons explaining that determination. Detroit Edison Co., et al. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1767, 1768 (1982). See Washington Public Power Supply System (WPPSS Nuclear Project Nos. 1 and 2), CLI-82-29, 16 NRC 1221, 1228-1229 (1982). See also Porter County Chapter of the Izaak Walton League of America, Inc. v. Nuclear Regulatory Commission, 606 F.2d 1363, 1369-1370 (D.C. Cir. 1979); Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-722, 17 NRC 546, 552-53 (1983). Under 10 CFR § 2.206, one may petition the NRC for stricter enforcement actions than the agency contemplates. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 442-43 (1980).

The agency has broad discretion in establishing and applying rules for public participation on enforcement proceedings. Marble Hill, supra, 11 NRC at 440-41.

6.24.1 Petition for Show Cause Order

The mechanism for requesting a show cause order is a petition filed pursuant to 10 CFR § 2.206. See, e.g., Consolidated Edison Co. of New York (Indian Point, Unit 2) and Power Authority of the State of New York (Indian Point, Unit 3), CLI-83-16, 17 NRC 1006, 1009 (1983). Note that such a petition may not be used to seek relitigation of an issue that has already been decided or to avoid an existing forum in which the issue is being or is about to be litigated. Consolidated Edison Co. of N.Y., Inc. (Indian Point, Units 1, 2 & 3), CLI-75-8, 2 NRC 173, 177 (1975); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-6, 13 NRC 443, 446 (1981); General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Units 1 and 2) and (Oyster Creek Nuclear Generating Station), CLI-85-4, 21 NRC 561, 563 (1985).

Nonparties to a proceeding are also prohibited from using 10 CFR § 2.206 as a means to reopen issues which were previously adjudicated. General Public Utilities, supra, 21 NRC at 564. See, e.g., Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429 (1979), aff'd, Porter County Chapter of the Izaak Walton League, Inc. v. NRC, 606 F.2d 1363 (D.C. Cir. 1979).

6.24.1.1 Grounds for Show Cause Order

The institution of a show cause proceeding to modify, suspend, or revoke a license need not be predicated upon

alleged license violations, but rather may be based upon any "facts deemed to be sufficient grounds for the proposed action." 10 CFR § 2.202. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 570-71 (1980).

6.24.1.2 Burden of Proof for Show Cause Order

The Atomic Energy Act intends the party seeking to build or operate a nuclear reactor to bear the burden of proof in any Commission proceeding bearing on its application to do so, including a show cause proceeding. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 571 (1980).

6.24.1.3 Issues in Show Cause Proceedings

One cannot seek to intervene in an enforcement proceeding to have NRC impose a stricter penalty than the NRC seeks. Issues in show cause proceedings are only those set out in the show cause order. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), CLI-80-10, 11 NRC 438, 442 (1980).

The Commission may limit the issues in enforcement proceedings to whether the facts as stated in the order are true and whether the remedy selected is supported by those facts. Boston Edison Co. (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44, 45 (1982), citing, Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, at 441-442 (1980).

One may only intervene in an enforcement action upon a showing of injury from the contemplated action set out in the show cause order. One who seeks a stricter penalty than the NRC proposes has no standing to intervene because it is not injured by the lesser penalty. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), CLI-80-10, 11 NRC 438, 442 (1980).

6.24.2 Standards for Issuing a Show Cause Order

The standard to be applied in determining whether to issue a show cause order is whether substantial health or safety issues have been raised. A mere dispute over factual issues will not suffice. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 433 (1978).

The Director of Nuclear Reactor Regulation properly has discretion to differentiate between those petitions which indicate that substantial issues have been raised warranting institution of a proceeding and those which serve

merely to demonstrate that in hindsight, even the most thorough and reasonable of forecasts will prove to fall short of absolute prescience. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 433 (1978).

6.24.3 Review of Decision on Request for Show Cause Order

10 CFR § 2.206 has been amended to provide that the Commission may, on its own motion, review the decision of the Director not to issue a show cause order to determine if the Director has abused his discretion. 10 CFR § 2.206(c)(1). No other petition or request for Commission review will be entertained. 10 CFR § 2.206(c)(2).

While there is no specific provision for Commission review of a decision to issue a show cause order, the amended regulation does acknowledge that the review power set forth in Section 2.206 does not limit the Commission's supervisory power over delegated Staff actions. 10 CFR § 2.206 (c)(1). Thus, it is clear that the Commission may conduct any review of a decision with regard to requests for show cause orders that it deems necessary.

Prior to the amendment of Section 2.206, that regulation was silent as to Commission review. At that time, the Commission indicated that its review of a decision of the Director would be directed toward whether the Director abused his authority and, in particular, would include a consideration of the following:

- (1) does the statement of reasons for issuing the order permit a rational understanding of the basis for the decision;
- (2) did the Director correctly comprehend the applicable law, regulations and policy;
- (3) were all necessary factors included and irrelevant factors excluded;
- (4) were appropriate inquiries made as to the facts asserted;
- (5) is the decision basically untenable on the basis of the facts known to the Director.

Consolidated Edison Co. of N.Y., Inc. (Indian Point, Units 1, 2 & 3), CLI-75-8, 2 NRC 173 (1975). See also Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-79-6, 9 NRC 673, 676 at n.1 (1979).

Under the Indian Point standards, the Director's decision will not be disturbed unless it is clearly unwarranted or an abuse of discretion. Licenses Authorized to Possess or Transport Strategic Quantities of Special Nuclear Material, CLI-77-3, 5 NRC 16 (1977). Although the Indian Point review is essentially a deferral to the Staff's judgment on facts relating to a potential enforcement action, it is not an abdication of the Commission's responsibilities since the Commission will decide any policy matters involved. Id. at 5 NRC 20, n.6.

The Appeal Board normally lacks jurisdiction to entertain motions seeking review only of actions of the Director of Nuclear Reactor Regulation; the Commission itself is the forum for such review. See 10 CFR § 2.206(c). Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-466, 7 NRC 457 (1978).

Review of a show cause order is limited to whether the Director of Nuclear Reactor Regulation abused his discretion. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 433 (1978).

The validity of a show cause order is judged on the basis of information available to the Director at the time it was issued at the start of the proceeding. Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 5 (1980).

Issuance of a show cause order requiring interim action is not the determination of the merits of a controversy. Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 6 (1980).

6.24.4 Notice/Hearing on Show Cause to Licensee/Permittee

While a show cause order with immediate suspension of a license or permit may be issued without prior written notice where the public health, interest or safety is involved, the Commission cannot permanently revoke a license without prior notice and an opportunity for a hearing guaranteed by 10 CFR § 2.202. Consumers Power Co. (Midland Plant, Units 1 & 2), CLI-74-3, 7 AEC 7 (1974).

The Director may issue an immediately effective order without prior written notice under 10 CFR § 2.202(f) if (1) the public health, safety or interest so requires, or (2) the licensee's violations are willful. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-79-6, 9 NRC 673, 677

(1979). In civil proceedings, action taken by a licensee in the belief that it was legal does not preclude a finding of willfulness. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-79-6, 9 NRC 673, 678 (1979).

Latent conditions which may cause harm in the future are a sufficient basis for issuing an immediately effective show cause order where the consequences might not be subject to correction in the future. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-79-6, 9 NRC 673, 677 (1979), citing Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-74-3, 7 AEC 7, 10-12 (1974).

Purported violations of agency regulations support an immediately effective order even where no adverse public health consequences are threatened. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-79-6, 9 NRC 673, 677-78 (1979).

6.24.5 Burden of Proof in Show Cause Proceedings

The burden of proof in a show cause proceeding with respect to a construction permit is on the permit holder. Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-283, 2 NRC 11 (1975). As to safety matters this is so until the award of a full-term operating license. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-81-7, 13 NRC 257, 264-65 (1981). However, the burden of going forward with evidence "sufficient to require reasonable minds to inquire further" is on the person who sought the show cause order. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-315, 3 NRC 101, 110-11 (1976).

Civil penalties may be imposed for the violation of regulations of license conditions without a finding of fault on the part of the licensee, so long as it is believed such action will positively affect the conduct of the licensee, or serve as an example to others. It matters not that the imposition of the civil penalty might be viewed as punitive. A licensee is responsible for all violations committed by its employees, whether it knew or could have known of them. There is no need to show scienter. One is not exempted from regulation by operating through an employee. In re Atlantic Research Corp., CLI-80-7, 11 NRC 413 (1980).

6.24.6 Consolidation of Petitioners in Show Cause Proceedings

The Director may, in his discretion, consolidate the essentially indistinguishable requests of petitioners if those petitioners are unable to demonstrate prejudice as

a result of the consolidation. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 33 (1978).

6.24.7 Necessity of Hearing in Show Cause Proceedings

Once a notice of opportunity for hearing has been published and a request for a hearing has been submitted, the decision as to whether a hearing is to be held no longer rests with the Staff but instead is transferred to the Commission or an adjudicatory tribunal designated to preside in the proceeding. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-80-26, 12 NRC 367, 371 (1980).

6.24.8 Intervention in Show Cause Proceedings

The requirements for standing in a show cause proceeding are no stricter than those in the usual licensing proceeding. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-80-26, 12 NRC 367, 374 (1980).

6.25 Summary Disposition Procedures

(SEE 3.5)

6.26 Suspension, Revocation or Modification of License

A license or construction permit may be modified, suspended or revoked for:

- (1) any material false statement in an application or other statement of fact required of the applicant;
- (2) conditions revealed by the application, statement of fact, inspection or other means which would warrant the Commission to refuse to grant a license in the first instance;
- (3) failure to construct or operate a facility in accordance with the terms of the construction permit or operating license; or
- (4) violation of, or failure to observe, any terms and provisions of the Atomic Energy Act, the regulations, a permit, a license, or an order of the Commission. 10 CFR § 50.100.

The procedures for modifying, suspending or revoking a license are set forth in Subpart B to 10 CFR.

Where information is presented which demonstrates an undue risk to public health and safety, the NRC will take prompt remedial action including shutdown of operating facilities. Such actions

may be taken with immediate effect notwithstanding the Administrative Procedure Act requirements of notice and opportunity to achieve compliance. Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 404, 405 (1978).

A violation of a regulation does not of itself result in a requirement that a license be suspended. Both the Atomic Energy Act and NRC regulations support the conclusion that the choice of remedy for regulatory violations is within the sound judgment of the Commission and not foreordained. See 42 U.S.C. § 2236, § 2280, § 2282; 10 CFR § 50.100. Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 405 (1978).

A decision on whether to suspend a permit pending a decision on remand must be based on (1) a traditional balancing of the equities, and (2) a consideration of any likely prejudice to further decisions that might be called for by the remand. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-623, 12 NRC 670, 677 (1980).

If a safety problem is revealed at any time during low-power operation of a facility or as a result of the merits review of a party's appeal of the decision to authorize low-power operation, the low-power license can be suspended. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-789, 20 NRC 1443, 1447 (1984). See also Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 1), CLI-81-30, 14 NRC 950 (1981).

There is no statutory requirement under Section 189a of the Atomic Energy Act of 1954 for the Commission to offer a hearing on an order lifting a license suspension. 42 U.S.C. 2239(a). It is within the discretionary powers of the Commission to offer a formal hearing prior to lifting a license suspension. The Commission's decision depends upon the specific circumstances of the case and a decision to grant a hearing in a particular instance (such as the restart of Three Mile Island, Unit 1) does not establish a general agency requirement for hearings on the lifting of license suspensions. The Commission has generally denied such requests for hearings. Southern California Edison Co. (San Onofre Nuclear Generating Station, Unit 1), CLI-85-10, 21 NRC 1569, 1575 n.7 (1985). See, e.g., Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-84-5, 19 NRC 953 (1984), aff'd, San Luis Obispo Mothers for Peace v. NRC, 751 F.2d 1287, 1314 (D.C. Cir. 1984).

6.27 Technical Specifications

10 CFR § 50.36 specifies, inter alia, that each operating license will include technical specifications to be derived from the analysis and evaluation included in the safety analysis report, and amendments thereto, and may also include such additional technical specifications as the Commission finds appropriate.

The regulation sets forth with particularity the types of items to be included in technical specifications. Portland General Electric Company (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 272 (1979).

There is neither a statutory nor a regulatory requirement that every operational detail set forth in an application's safety analysis report (or equivalent) be subject to a technical specification to be included in the license as an absolute condition of operation which is legally binding upon the licensee unless and until changed with specific Commission approval. Technical specifications are reserved for those matters where the imposition of rigid conditions or limitations upon reactor operation is deemed necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety. Trojan, supra, 9 NRC at 273.

Technical specifications for a nuclear facility are part of the operating license for the facility and are legally binding. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1257 (1984), citing, Trojan, supra, 9 NRC at 272-73.

6.28 Termination of Facility Licenses

Termination of facility licenses is covered generally in 10 CFR § 50.82.

6.29 Procedures in Other Types of Hearings

6.29.1 Military or Foreign Affairs Functions

Under the Administrative Procedure Act, 5 U.S.C. §554(a) (4), and the Commission's Rules of Practice, 10 CFR § 2.700a, procedures other than those for formal evidentiary hearings may be fashioned when an adjudication involves the conduct of military or foreign affairs functions. Nuclear Fuel Services, Inc. (Erwin, Tennessee), CLI-80-27, 11 NRC 799, 802 (1980).

6.29.2 Export Licensing

Individual fuel exports are not major Federal actions. Westinghouse Electric Corp. (Exports to the Philippines), CLI-80-15, 11 NRC 672 (1980). (See also 3.4.6)

6.29.2.1 Jurisdiction of Commission re Export Licensing

The Commission is neither required nor precluded by the Atomic Energy Act or NEPA from considering impacts of exports on the global commons. Provided that NRC review does not include visiting sites within the recipient nation to

gather information or otherwise intrude upon the sovereignty of a foreign nation, consideration of impacts upon the global commons, is legally permissible. Westinghouse Electric Corp. (Exports to the Philippines), CLI-80-14, 11 NRC 631, 637-644 (1980). The Commission's legislative mandate neither compels nor precludes examination of health, safety and environmental effects occurring abroad that could affect U.S. interests. The decision whether to examine these effects is a question of policy to be decided as a matter of agency discretion. Id., 11 NRC at 654.

As a matter of policy, the Commission has determined not to conduct such reviews in export licensing decisions primarily because no matter how thoroughly the NRC review, the Commission still would not be in a position to determine that the reactor could be operated safely. Id., 11 NRC at 648.

The Commission lacks legal authority under AEA, NEPA and NNPA to consider health, safety and environmental impacts upon citizens of recipient nations because of the traditional rule of domestic U.S. law that Federal statutes apply only to conduct within, or having effect within, the territory of the U.S. unless the contrary is clearly indicated in the statute. Id., 11 NRC at 637. See also General Electric Co., et al. (Exports to Taiwan), CLI-81-2, 13 NRC 67, 71 (1981).

The alleged undemocratic character of the Government of the Philippines does not relate to health, safety, environmental and non-proliferation responsibilities of the Commission and are beyond the scope of the Commission's jurisdiction. Exports to the Philippines, supra, 11 NRC at 656.

6.29.2.2 Export License Criteria

The AEA of 1954, as amended by the NNPA, provides that the Commission may not issue a license authorizing the export of a reactor, unless it finds, based on a reasonable judgment of the assurances provided, that the criteria set forth in §§ 127 and 128 of the AEA are met. The Commission must also determine that the export would not be inimical to the common defense and security or health and safety of the public and would be pursuant to an Agreement for Cooperation, Westinghouse Electric Corp. (Exports to the Philippines), CLI-80-14, 11 NRC 631, 652 (1980).

The Commission may not issue a license for component exports unless it determines that the three specific criteria in § 109(b) of AEA are met and also determines that the export won't be inimical to common defense. Westinghouse Electric Corp. (Exports to the Philippines), CLI-80-14, 11 NRC 631, 654 (1980).

KEY WORD OUT OF CONTEXT INDEX

NRC KWOC INDEX

ABANDONMENT	
1.10	Abandonment of Application for License or Permit
ABSENCE	
3.3.2.3	Sudden Absence of ASLB Member at Hearing (Scheduling)
ABSENT	
2.9.5.8	Contentions Challenging Absent or Incomplete Documents (Intervention)
ACCIDENTS	
6.15.7	Consideration of Class 9 Accidents in an Environmental Impact Statement (EIS)
ACRS	
3.12.1.2	ACRS Members as Witnesses
2.11.5.2	Compelling Discovery From ACRS and ACRS Consultants
3.11.2	Status of ACRS Letters (Rules of Evidence)
ACT	
6.7.2	Degree of Proof Needed re Endangered Species Act
6.7	Endangered Species Act
6.23.1	Freedom of Information Act Disclosure
6.23.2	Privacy Act Disclosure
6.7.1	Required Findings re Endangered Species Act
ACTION	
5.6	Appeal Board Action
ACTIONS	
5.12	Actions Similar to Appeals
5.8.11	Appeal of Other Licensing Actions
6.10.1.1	Civil Penalties (Enforcement Actions)
6.10.1	Enforcement Actions
6.14.3	Licensing Board Actions on Motions in NRC Proceedings
6.10.1.2	Show-Cause Proceedings (Enforcement Actions)
ACTIVITIES	
5.8.9	Appeal of Order on Pre-LWA Activities
6.19.2	Limited Work Authorization (Pre-permit Activities)
6.19.2.1	LWA Status Pending Remand Proceedings (Pre-permit Activities)
6.15.8.3	Pre-LWA Activities; Offsite Activities (Power of NRC Under NEPA)
6.19	Pre-Permit Activities
ACTIVITY	
6.19.1	Pre-LWA Activity (Pre-permit)
ADDITION	
1.7.2	Amended Notice After Addition of New Owners
ADDRESS	
4.4.3	Reopening Construction Permit Hearings to Address New Generic Issues
ADDRESSED	
3.4.3	Issues Not Addressed by a Party at Hearing
ADEQUACY	
2.5.2	Adequacy of Notice of Hearing
2.9.5.9	Contentions re Adequacy of Security Plan (Intervention)
ADHERENCE	
6.18	Precedent and Adherence to Past Agency Practice
ADJOURNED	
3.3.1.3	Adjourned Hearings
ADJUDICATORY	
6.5	Communication Between Staff, Applicant, Other Parties, Adjudicatory Bodies
6.5.4.1	Duty to Inform Adjudicatory Board of Significant Developments (Communication)
3.1.4.2	Grounds for Disqualification of Adjudicatory Board Member (Hearings)
3.1.4.3	Improperly Influencing an Adjudicatory Board Decision (Hearings)

NRC KWOC INDEX

ADJUDICATORY

- 2.10.1 Limited Appearances by Nonparties Before NRC Adjudicatory Proceedings
- 3.1.4.1 Motion to Disqualify Adjudicatory Board Member (Hearings)
- 6.23.3.1 Protecting Information Where Disclosure is Sought in an Adjudicatory Proceeding

ADMISSIBILITY

- 3.11.1.1 Admissibility of Evidence (Rules)
- 3.11.1.1.1 Admissibility of Hearsay Evidence (Rules)
- 3.4.1 Intervenor's Contentions (Admissibility at Hearing)

ADMITTING

- 2.9.5.3 Requirement of Contentions for Purposes of Admitting Petitioner as a Party

ADVISORY

- 5.8.8 Appeal of Advisory Decisions on Trial Rulings

AFFAIRS

- 6.29.1 Military or Foreign Affairs Functions (Procedures)

AFFECTED

- 6.15.6.1.2 Socioeconomic Costs as Affected by Increased Employment and Taxes from Proposed Facility

AFFECTING

- 3.3.5.2 Convenience of Litigants Affecting Hearing Location (Scheduling)
- 2.3.1 Public Interest Requirements Affecting Hearing Location

AFFIDAVITS

- 3.14.1 Supplementing Hearing Record by Affidavits

AFFIRMANCE

- 5.6.6 Effect of Appeal Board Affirmance as Precedent

AFFIRMATIVE

- 2.9.9.2.1 Affirmative Presentation by Intervenor-Participants

AGENCIES

- 3.1.2.6 Licensing Board's Relationship with Other Agencies, Jurisdictions

AGENCY

- 6.18 Precedent and Adherence to Past Agency Practice

AGENCY'S

- 6.20.5 Agency's Interpretation of its Own Regulations

ALLOWING

- 5.5.3 Matters Considered on Appeal of Ruling Allowing Late Intervention

ALTERNATE

- 3.7.3.6 Alternate Sites Under NEPA (Means of Proof)
- 6.15.4.2 Standards for Conducting Cost-Benefit Analysis Related to Alternate Sites
- 6.15.4 Alternatives (NEPA Considerations)
- 6.15.4.1 Obviously Superior Standard for Site Selection (NEPA Alternatives)

AMENDED

- 1.7.2 Amended Notice After Addition of New Owners

AMENDMENT

- 2.9.3.4 Amendment of Petition Expanding Scope of Intervention
- 6.1.3 Matters to be Considered in License Amendment Proceedings
- 6.1.5 Primary Jurisdiction in Appeal Board to Consider License Amendment in Special Hearing

- 6.1.3.1 Specific Matters Considered in License Amendment Proceedings

AMENDMENTS

- 3.5.1.2 Amendments to Existing Licenses (Use of Summary Disposition)
- 6.1 Amendments to Existing Licenses or Construction Permits
- 6.2 Amendments to License or Permit Applications
- 6.1.2 Amendments to Research Reactor Licenses
- 6.1.6 Facility Changes Without License Amendments
- 6.1.4 Hearing Requirements for License or Permit Amendments
- 6.1.4.2 Intervention in Hearing on License or Permit Amendments
- 6.1.4.4 Matters Considered in Hearings on License Amendments

NRC KWOC INDEX

AMENDMENTS

6.1.4.1 Notice of Hearing on License or Permit Amendments

6.1.1 Staff Review of Proposed License or Permit Amendments

6.1.4.3 Summary Disposition Procedures for Hearings on License or Permit Amendment

AMICUS-CURIAE

5.10.4 Amicus-Curiae Briefs on Appeal

ANALYSIS

6.15.6 Cost-Benefit Analysis Under NEPA

6.15.4.2 Standards for Conducting Cost-Benefit Analysis Related to Alternate Sites

ANTITRUST

6.3 Antitrust Considerations

6.3.1 Consideration of Antitrust Matters After the Construction Permit Stage

6.3.3.1 Discovery Cutoff Dates for Antitrust Proceedings

6.3.3 Discovery in Antitrust Proceedings

6.3.2 Intervention in Antitrust Proceedings

2.9.3.6 Intervention in Antitrust Proceedings

APPEAL

5.10.4 Amicus-Curiae Briefs on Appeal

5.6 Appeal Board Action

2.6.3.3 Appeal from Prehearing Conference Order

5.8.8 Appeal of Advisory Decisions on Trial Rulings

5.8.13 Appeal of Director's Decision on Show-Cause Petition

5.8.3 Appeal of Discovery Rulings

5.8.13 Appeal of Evidentiary Rulings

5.8.15 Appeal of Findings of Fact

5.8.7 Appeal of Matters of Recurring Importance

5.8.9 Appeal of Order on Pre-LWA Activities

5.8.11 Appeal of Other Licensing Actions

5.8.10 Appeal of Partial Initial Decisions

5.8.3.2 Appeal of Rulings Curtailing Discovery

5.8.12 Appeal of Rulings on Civil Penalties

5.8.3.1 Appeal of Rulings on Discovery Against Nonparties

5.8.1 Appeal of Rulings on Intervention

5.8.2 Appeal of Scheduling Orders

5.8.6 Appeal on Grounds of Procedural Irregularities

5.12.3 Application to Commission for a Stay After Appeal Board's Denial of Stay

5.10 Briefs on Appeal

5.13.2 Briefs on Appeal

6.17.1 Compliance with Licensing and Appeal Board Orders

5.10.3 Contents of Brief on Appeal

5.6.7 Disqualification of Appeal Board Member

5.6.6 Effect of Appeal Board Affirmance as Precedent

APPEAL

- 5.15.1 Effect of Commission's Refusal to Entertain Appeal (Judicial Review)
- 5.5.2 Effect on Appeal of Failure to File Proposed Findings
- 5.6.4 Grounds for Immediate Suspension of Construction Permit by Appeal Board
- 5.3 How to Appeal
- 5.6.5 Immediate Effectiveness of Appeal Board Decision
- 5.5.1 Issues Raised for the First Time on Appeal
- 5.15 Judicial Review of Appeal Board Decisions
- 5.18 Jurisdiction of NRC to Consider Matters While Judicial Review is Pending (Appeal)
- 5.19.2 Jurisdiction of the Appeal Board on Remand
- 5.5 Matters Considered on Appeal
- 5.5.3 Matters Considered on Appeal of Ruling Allowing Late Intervention
- 5.13.4 Motions to Strike Appeal
- 5.10.1 Necessity of Brief on Appeal
- 5.10.3.1 Opposing Briefs on Appeal
- 6.17 Orders of Licensing and Appeal Boards
- 5.7.2 Parties' Opportunity to be Heard on Appeal
- 6.4.1 Practice Before Licensing or Appeal Boards (Attorney Conduct)
- 5.6.6.1 Precedential Effect of Unpublished Opinions of Appeal Boards
- 6.1.5 Primary Jurisdiction in Appeal Board to Consider License Amendment in Special Hearing
- 6.4.1.1 Professional Decorum Before Licensing or Appeal Boards (Attorney Conduct)
- 5.7.1 Requirements for a Stay Pending Appeal
- 5.1 Right to Appeal
- 5.6.1 Role of Appeal Board
- 5.6.3 Standards for Reversing Licensing Board on Findings of Fact (Appeal)
- 5.7 Stays Pending Appeal
- 5.15.2 Stays Pending Judicial Review of Appeal Board Decision
- 5.15.3 Stays Pending Remand After Judicial Review of Appeal Board Decision
- 4.6 Sua-Sponte Review by the Appeal Board
- 5.10.2.2 Supplementary Briefs on Appeal
- 5.10.2.1 Time Extensions for Brief on Appeal
- 5.10.2 Time for Submittal of Brief on Appeal

5.2

Who can Appeal

APPEALABILITY

5.8.5 Appealability of Order Denying Summary Disposition

5.8.4.1 Order Consolidating Parties (Appealability)

5.8.4 Refusal to Compel Joinder of Parties (Appealability)

APPEALABLE

5.8 Specific Appealable Matters

APPEALS

5.12 Actions Similar to Appeals

5.0

APPEALS

NRC KWOC INDEX

APPEALS

- 2.9.11 Appeals by Intervenor
- 5.13.1.1 Appeals from Initial and Partial Initial Decisions
- 5.13 Appeals from Orders, Ratings, Initial Decisions, Partial Initial Discussions
- 2.9.3.3.4 Appeals from Rulings on Late Intervention
- 3.5.5 Appeals from Rulings on Summary Disposition
- 2.11.6 Appeals of Discovery Rulings
- 3.3.4 Appeals of Hearing Date Rulings (Scheduling)
- 2.9.5.13 Appeals of Rulings on Contentions (Intervention)
- 2.9.7 Appeals of Rulings on Intervention
- 5.5.4 Consolidation of Appeals on Generic Issues
- 5.9.1 General Requirements for Perfecting Appeals from Initial Decision
- 5.9 Perfecting Appeals
- 5.4 Time for Filing Appeals
- 5.13 Time for Filing Appeals
- 5.13.1.2 Variation in Time Limits on Appeals

APPEAR

- 5.11.1 Failure to Appear for Oral Argument

APPEARANCE

- 3.12.1 Compelling Appearance of Witness
- 2.10 Nonparty Participation (Limited Appearance and Interested States)
- 2.10.1.1 Requirements for Limited Appearance by Nonparties

APPEARANCES

- 2.10.1 Limited Appearances by Nonparties Before NRC Adjudicatory Proceedings

- 2.10.1.2 Scope and Limitations of Limited Appearances by Nonparties

APPLICANT

- 6.5 Communication Between Staff, Applicant, Other Parties, Adjudicatory Bodies
- 3.7.1 Duties of Applicant or Licensee at Hearing (Burden and Means of Proof)

- 6.16.1.1 NRC Staff Demands on Applicant or Licensee

APPLICANTS

- 1.1 Applicants for License or Permit

APPLICATION

- 1.10 Abandonment of Application for License or Permit

- 1.0 APPLICATION FOR LICENSE OR PERMIT

- 5.12.3 Application to Commission for a Stay After Appeal Board's Denial of Stay

- 1.5 Contents of Application for License or Permit

- 1.6 Docketing of License or Permit Application

- 1.4 Form of Application for Construction Permit or Operating License

- 1.4.1 Form of Application for Initial License or Permit

- 1.4.2 Form of Renewal Application for License or Permit

- 1.7 Notice of License or Permit Application

- 6.5.3.1 Staff Review of Application (Communication)

- 1.8 Staff Review of License or Permit Application

- 1.9 Withdrawal of Application for License or Permit

NRC KWOC INDEX

APPLICATIONS	
6.2	Amendments to License or Permit Applications
1.3	Applications for Early Site Review
1.5.1	Incomplete Applications for License or Permit
APPLICATIONS	
1.5.2	Material False Statements in Applications for License or Permit
1.2	Renewal Applications for License or Permit
AREA	
3.7.3.1	Exclusion Area Controls (Means of Proof)
ARGUMENT	
5.11.1	Failure to Appear for Oral Argument
5.11.2	Grounds for Postponement of Oral Argument
5.11	Oral Argument
5.11.3	Oral Argument by Nonparties
ASLB	
2.8.1.2	Evidence of Bias in Challenges to ASLB Composition
2.8.1	Prehearing Motions Challenging ASLB Composition
3.3.2.3	Sudden Absence of ASLB Member at Hearing (Scheduling)
2.8.1.3	Waiver of Challenges to ASLB Composition
ASSISTANCE	
2.9.10.1	Financial Assistance to Intervenors
ATTENDANCE	
3.6	Attendance at and Participation in Hearings
2.9.9.5	Attendance at or Participation in Prehearing Conference or Hearing
ATTORNEY	
6.4	Attorney Conduct
6.4.2.3	Conflict of Interest (Attorney Conduct)
6.4.2	Disciplinary Matters re Attorney Conduct
6.4.2.1	Jurisdiction of Special Board re Attorney Discipline and Conduct
6.4.1	Practice Before Licensing or Appeal Boards (Attorney Conduct)
6.4.2.2	Procedures in Special Disqualification Hearings re Attorney Conduct
6.4.1.1	Professional Decorum Before Licensing or Appeal Boards (Attorney Conduct)
AUTHORITY	
3.1.2.1.1	Authority in Construction Permit Proceedings Distinguished from Authority in Operating License Proceedings
3.1.2.3	Authority of Licensing Board to Raise Sua-Sponte Issues
3.18.2	Post-Termination Authority of Commission
3.1.2.2	Scope of Authority to Rule on Petitions and Motions
AUTHORIZATION	
6.19.2	Limited Work Authorization (Pre-permit Activities)
AVAILABILITY	
3.7.3.4	Availability of Uranium Supply (Means of Proof)
BETWEEN	
6.5	Communication Between Staff, Applicant, Other Parties, Adjudicatory Bodies
BIAS	
BOARD	
5.6	Appeal Board Action
3.1.2.3	Authority of Licensing Board to Raise Sua-Sponte Issues
3.12.3	Board Witnesses

NRC KWOC INDEX

BOARD

- 6.17.1 Compliance with Licensing and Appeal Board Orders
- 3.1.2.7 Conduct of Hearing by Licensing Board
- 3.1.4 Disqualification of a Licensing Board Member (Hearings)
- 5.6.7 Disqualification of Appeal Board Member
- 6.5.4.1 Duty to Inform Adjudicatory Board of Significant Developments (Communication)
- 5.6.6 Effect of Appeal Board Affirmance as Precedent
- 3.1.1 General Role of Licensing Board (Hearings)
- 3.1.4.2 Grounds for Disqualification of Adjudicatory Board Member (Hearings)
- 5.6.4 Grounds for Immediate Suspension of Construction Permit by Appeal Board
- 5.6.5 Immediate Effectiveness of Appeal Board Decision
- 3.1.4.3 Improperly Influencing an Adjudicatory Board Decision (Hearings)
- 3.16.1 Independent Calculations by Licensing Board (Findings)
- 5.15 Judicial Review of Appeal Board Decisions
- 6.4.2.1 Jurisdiction of Special Board re Attorney Discipline and Conduct
- 5.19.2 Jurisdiction of the Appeal Board on Remand
- 5.19.1 Jurisdiction of the Licensing Board on Remand
- 6.14.3 Licensing Board Actions on Motions in NRC Proceedings
- 3.16 Licensing Board Findings
- 3.1 Licensing Board Hearings
- 3.1.4.1 Motion to Disqualify Adjudicatory Board Member (Hearings)
- 3.1.2 Powers and Duties of Licensing Board (Hearings)
- 6.1.5 Primary Jurisdiction in Appeal Board to Consider License Amendment in Special Hearing
- 3.1.3 Quorum Requirements for Licensing Board Hearing
- 3.1.5 Resignation of a Licensing Board Member (Hearings)
- 5.6.1 Role of Appeal Board
- 3.1.2.1 Scope of Jurisdiction of the Licensing Board
- 5.6.3 Standards for Reversing Licensing Board on Findings of Fact (Appeal)
- 5.15.2 Stays Pending Judicial Review of Appeal Board Decision
- 5.15.3 Stays Pending Remand After Judicial Review of Appeal Board Decision
- 4.6 Sua-Sponte Review by the Appeal Board

BOARD'S

- 5.12.3 Application to Commission for a Stay After Appeal Board's Denial of Stay
- 3.1.2.6 Licensing Board's Relationship with Other Agencies, Jurisdictions
- 3.1.2.5 Licensing Board's Relationship with the NRC Staff

BOARDS

- 6.17 Orders of Licensing and Appeal Boards
- 6.4.1 Practice Before Licensing or Appeal Boards (Attorney Conduct)
- 5.6.6.1 Precedential Effect of Unpublished Opinions of Appeal Boards
- 6.4.1.1 Professional Decorum Before Licensing or Appeal Boards (Attorney Conduct)

NRC KWOC INDEX

BODIES	
6.5	Communication Between Staff, Applicant, Other Parties, Adjudicatory Bodies
BRIEF	
5.10.3	Contents of Brief on Appeal
5.10.1	Necessity of Brief on Appeal
5.10.2.1	Time Extensions for Brief on Appeal
BRIEF	
5.10.2	Time for Submittal of Brief on Appeal
BRIEFS	
5.10.4	Amicus-Curiae Briefs on Appeal
5.10	Briefs on Appeal
5.13.2	Briefs on Appeal
5.10.3.1	Opposing Briefs on Appeal
5.10.2.2	Supplementary Briefs on Appeal
BURDEN	
3.7	Burden and Means of Proof at Hearing
3.7.3.3	Burden and Means of Proof in Interim Licensing Suspension Cases
3.8	Burden of Persuasion at Hearing (Degree of Proof)
2.9.9.1	Burden of Proof (Intervenors)
6.24.1.2	Burden of Proof for Show-Cause Order
6.24.5	Burden of Proof in Show-Cause Proceedings
3.7.1	Duties of Applicant or Licensee at Hearing (Burden and Means of Proof)
3.8.1	Environmental Effects Under NEPA (Burden of Persuasion at Hearing)
3.7.2	Intervenor's Contentions (Burden and Means of Proof)
CALCULATIONS	
3.16.1	Independent Calculations by Licensing Board (Findings)
CALLS	
2.7	Prehearing Conference Calls
6.5.2	Telephone Conference Calls (Communication)
CAPABILITY	
3.7.3.7	Management Capability (Means of Proof)
CASE	
3.3.2.4	Time Extensions for Case Preparation Before Hearing
CASES	
3.7.3.3	Burden and Means of Proof in Interim Licensing Suspension Cases
2.9.4.1.3	Standing to Intervene in Export Licensing Cases
CERTIFICATION	
5.14	Certification of Major or Novel Questions to the Commission
5.12.2.1	Directed Certification of Questions for Interlocutory Review
5.12.2.1.2	Effect of Directed Certification on Uncertified Issues
3.15	Interlocutory Review via Directed Certification
CERTIFY	
5.12.2.1.1	Effect of Subsequent Developments on Motion to Certify
CHALLENGES	
6.20.4	Challenges to Regulations
2.8.1.2	Evidence of Bias in Challenges to ASLB Composition
2.8.1.3	Waiver of Challenges to ASLB Composition
CHALLENGING	
2.9.5.8	Contentions Challenging Absent or Incomplete Documents (Intervention)
2.9.5.6	Contentions Challenging Regulations (Intervention)
2.8.1	Prehearing Motions Challenging ASLB Composition

NRC KWOC INDEX

CHANGES	
6.1.6	Facility Changes Without License Amendments
CIRCUMSTANCES	
6.15.3	Circumstances Requiring Redrafting of Final Environmental Statement (FES)
CIVIL	
5.8.12	Appeal of Rulings on Civil Penalties
6.10.1.1	Civil Penalties (Enforcement Actions)
CLASS	
6.15.7	Consideration of Class 9 Accidents in an Environmental Impact Statement (EIS)
COLLATERAL-ESTOPPEL	
3.17	Res-Judicata and Collateral-Estoppe1
COMMENT	
6.15.3.1	Effect of Failure to Comment on Draft Environmental Statement (DES) (NEPA)
COMMENTS	
3.11.1.4	Off-the-Record Comments (Rules of Evidence)
COMMISSION	
5.12.3	Application to Commission for a Stay After Appeal Board's Denial of Stay
5.14	Certification of Major or Novel Questions to the Commission
6.20.2	Commission Policy Statements
6.29.2.1	Jurisdiction of Commission re Export Licensing
3.18.2	Post-Termination Authority of Commission
5.17	Reconsideration by the Commission
5.16	Review of Commission Decisions
COMMISSION'S	
5.15.1	Effect of Commission's Refusal to Entertain Appeal (Judicial Review)
COMMISSIONER	
5.16.1	Review of Disqualification of a Commissioner (Judicial Review)
COMMUNICATION	
6.5	Communication Between Staff, Applicant, Other Parties, Adjudicatory Bodies
6.5.4.1	Duty to Inform Adjudicatory Board of Significant Developments (Communication)
6.5.4	Notice of Relevant Significant Developments (Communication)
6.5.3.1	Staff Review of Application (Communication)
6.5.3.2	Staff-Applicant Correspondence (Communication)
6.5.2	Telephone Conference Calls (Communication)
COMMUNICATIONS	
6.5.1	Ex-Parte Communications Rule
6.5.3	Staff-Applicant Communications
COMPEL	
5.8.4	Refusal to Compel Joinder of Parties (Appealability)
COMPELLING	
3.12.1	Compelling Appearance of Witness
2.11.5	Compelling Discovery
2.11.5.1	Compelling Discovery From ACRS and ACRS Consultants
COMPLIANCE	
6.17.1	Compliance with Licensing and Appeal Board Orders
6.20.1	Compliance with Regulations
COMPLY	
2.11.5.2	Sanctions for Failure to Comply with Discovery Orders
COMPOSITION	
2.8.1.1	Contents of Prehearing Motion Challenging ASLB Composition
2.8.1.2	Evidence of Bias in Challenges to ASLB Composition
2.8.1	Prehearing Motions Challenging ASLB Composition
2.8.1.3	Waiver of Challenges to ASLB Composition
CONDITIONS	
2.9.6	Conditions on Grants of Intervention

NRC KWOC INDEX

CONDUCT

6.4 Attorney Conduct

3.1.2.7 Conduct of Hearing by Licensing Board

6.16.5 Conduct of NRC Employees

6.4.2.3 Conflict of Interest (Attorney Conduct)

6.4.2 Disciplinary Matters re Attorney Conduct

CONDUCT

6.4.2.1 Jurisdiction of Special Board re Attorney Discipline and Conduct

6.4.1 Practice Before Licensing or Appeal Boards (Attorney Conduct)

6.4.2.2 Procedures in Special Disqualification Hearings re Attorney Conduct

6.4.1.1 Professional Decorum Before Licensing or Appeal Boards (Attorney Conduct)

CONDUCTING

6.15.4.2 Standards for Conducting Cost-Benefit Analysis Related to Alternate Sites

CONFERENCE

2.6.3.3 Appeal from Prehearing Conference Order

2.9.9.5 Attendance at or Participation in Prehearing Conference or Hearing

2.6.3.1 Effect of Prehearing Conference Order

2.6.3.2 Objections to Prehearing Conference Order

2.7 Prehearing Conference Calls

2.6.3 Prehearing Conference Order

6.5.2 Telephone Conference Calls (Communication)

CONFERENCES

2.6 Prehearing Conferences

2.6.2 Special Prehearing Conferences

2.6.1 Transcripts of Prehearing Conferences

CONFLICT

6.4.2.3 Conflict of Interest (Attorney Conduct)

CONSIDER

5.18 Jurisdiction of NRC to Consider Matters While Judicial Review is Pending (Appeal)

6.1.5 Primary Jurisdiction in Appeal Board to Consider License Amendment in Special Hearing

CONSIDERATION

6.3.1 Consideration of Antitrust Matters After the Construction Permit Stage

6.15.7 Consideration of Class 9 Accidents in an Environmental Impact Statement (EIS)

6.9.1 Consideration of Generic Issues in Licensing Proceedings

6.15.6.1 Consideration of Specific Costs Under NEPA

2.9.3.3.3 Consideration of Untimely Petitions to Intervene

CONSIDERATIONS

6.15.4 Alternatives (NEPA Considerations)

6.3 Antitrust Considerations

6.15.6.1.1 Cost of Withdrawing Farmland from Production (NEPA Considerations)

6.15.5 Need for Facility (NEPA Considerations)

6.15 NEPA Considerations

CONSIDERED

3.3.2.1 Factors Considered in Hearing Postponement

6.1.4.4 Matters Considered in Hearings on License Amendments

5.5 Matters Considered on Appeal

5.5.3 Matters Considered on Appeal of Ruling Allowing Late Intervention

NRC KWOC INDEX

CONSIDERED

- 6.1.3 Matters to be Considered in License Amendment Proceedings
- 6.1.3.1 Specific Matters Considered in License Amendment Proceedings
- CONSOLIDATING 5.10.4.1 Order Consolidating Parties (Appealability)
- CONSOLIDATION 5.4.4 Consolidation of Appeals on Generic Issues
- CONSOLIDATION 3.3.6 Consolidation of Hearings (Scheduling)
- 2.9.9.2.2 Consolidation of Intervenor Presentations
- 6.24.6 Consolidation of Petitioners in Show-Cause Proceedings

CONSTRUCTION

- 6.1 Amendments to Existing Licenses or Construction Permits
- 3.1.2.1.1 Authority in Construction Permit Proceedings Distinguished from Authority in Operating License Proceedings
- 6.3.1 Consideration of Antitrust Matters After the Construction Permit Stage
- 2.11.2.1 Construction of Discovery Rules
- 3.4.5 Construction Permit Extension Proceedings
- 3.5.1.1 Construction Permit Hearings (Use of Summary Disposition)
- 6.9.2.1 Effect of Unresolved Generic Issues in Construction Permit Proceedings
- 1.4 Form of Application for Construction Permit or Operating License
- 5.6.4 Grounds for Immediate Suspension of Construction Permit by Appeal Board

CONSULTANTS

- 4.4.3 Reopening Construction Permit Hearings to Address New Generic Issues

CONTAINED

- 2.11.5.1 Compelling Discovery From ACRS and ACRS Consultants

CONTENT

- 3.14.3 Material Not Contained in Hearing Record
- 3.5.2.3 Content of Motions or Responses (Summary Disposition)
- 3.5.4 Content of Summary Disposition Order

CONTENTIONS

- 2.9.5.13 Appeals of Rulings on Contentions (Intervention)
- 2.9.5.8 Contentions Challenging Absent or Incomplete Documents (Intervention)
- 2.9.5.6 Contentions Challenging Regulations (Intervention)
- 2.9.5.7 Contentions Involving Generic Issues (Intervention)
- 2.9.5 Contentions of Intervenor
- 2.9.5.9 Contentions re Adequacy of Security Plan (Intervention)
- 2.9.5.10 Defective Contentions (Intervention)
- 2.9.5.11 Discovery to Frame Contentions (Intervention)
- 3.4.1 Intervenor's Contentions (Admissibility at Hearing)
- 3.7.2 Intervenor's Contentions (Burden and Means of Proof)
- 2.9.5.4 Material Used in Support of Contentions (Intervention)
- 2.9.5.1 Pleading Requirements for Contentions (Intervention)
- 2.9.5.3 Requirement of Contentions for Purposes of Admitting Intervenor as a Party
- 2.9.5.12 Stipulations on Contentions (Intervention)
- 2.9.5.5 Timeliness of Submission of Contentions (Intervention)

NRC KWOC INDEX

CONTENTS

1.5	Contents of Application for License or Permit
5.10.3	Contents of Brief on Appeal
4.4.1.2	Contents of Motion to Reopen Hearing
2.5.1	Contents of Notice of Hearing
2.8.1.1	Contents of Prehearing Motion Challenging ASLB Composition
CONTROLS	
3.7.3.1	Exclusion Area Controls (Means of Proof)
CONVENIENCE	
3.3.5.2	Convenience of Litigants Affecting Hearing Location (Scheduling)
3.3.1.2	Convenience of Litigants re Hearing Schedule
COOLING	
6.15.8.4	Relationship to EPA with Regard to Cooling Systems (Power of NRC Under NEPA)
CORRESPONDENCE	
6.5.3.2	Staff-Applicant Correspondence (Communication)
COST	
2.9.10	Cost of Intervention
3.7.3.5.1	Cost of Withdrawing Farmland from Production (Means of Proof)
6.15.6.1.1	Cost of Withdrawing Farmland from Production (NEPA Considerations)
COST-BENEFIT	
6.15.6	Cost-Benefit Analysis Under NEPA
6.15.4.2	Standards for Conducting Cost-Benefit Analysis Related to Alternate Sites
COSTS	
6.15.6.1	Consideration of Specific Costs Under NEPA
3.7.3.5	Environmental Costs (Means of Proof)
6.15.6.1.2	Socioeconomic Costs as Affected by Increased Employment and Taxes from Proposed Facility
COUNSEL	
2.9.2	Intervenor's Need for Counsel
CRITERIA	
6.29.2.2	Export License Criteria
CROSS-EXAMINATION	
3.13	Cross-Examination at Hearing
3.13.1	Cross-Examination by Intervenors
2.9.9.3	Cross-Examination by Intervenors
3.13.2	Cross-Examination by Experts
3.13.3	Inability to Cross-Examine as Grounds to Reopen
CURTAILING	
5.8.3.2	Appeal of Rulings Curtailing Discovery
CUTOFF	
6.3.3.1	Discovery Cutoff Dates for Antitrust Proceedings
DATE	
3.3.4	Appeals of Hearing Date Rulings (Scheduling)
DATES	
6.3.3.1	Discovery Cutoff Dates for Antitrust Proceedings
DECISION	
5.8.14	Appeal of Director's Decision on Show-Cause Petition
5.9.1	General Requirements for Perfecting Appeals from Initial Decision
5.6.5	Immediate Effectiveness of Appeal Board Decision
3.1.4.3	Improperly Influencing an Adjudicatory Board Decision (Hearings)
4.3.1	Reconsideration of Initial Decision (Post-Hearing Matters)
6.24.3	Review of Decision on Request for Show-Cause Order
5.15.2	Stays Pending Judicial Review of Appeal Board Decision
5.15.3	Stays Pending Remand After Judicial Review of Appeal Board Decision

NRC KWOC INDEX

DECISIONS

- 5.8.8 Appeal of Advisory Decisions on Trial Rulings
- 5.8.10 Appeal of Partial Initial Decisions
- 5.13.1.1 Appeals from Initial and Partial Initial Decisions
- 5.13 Appeals from Orders, Rulings, Initial Decisions, Partial Initial Decision
- 4.3 Initial Decisions (Post-Hearing Matters)
- 5.15 Judicial Review of Appeal Board Decisions
- 5.16 Review of Commission Decisions

DECORUM

- 6.4.1.1 Professional Decorum Before Licensing or Appeal Boards (Attorney Conduct)

DEFECTIVE

- 2.9.5.10 Defective Contentions (Intervention)

DEFECTS

- 2.9.3.2 Defects in Pleadings (Intervention)

DEFERRAL

- 3.3.2.2 Effect of Plant Deferral on Hearing Postponement

DEGREE

- 3.8 Burden of Persuasion at Hearing (Degree of Proof)

- 6.7.2 Degree of Proof Needed re Endangered Species Act

DEMANDS

- 6.16.1.1 NRC Staff Demands on Applicant or Licensee

DENIAL

- 5.12.3 Application to Commission for a Stay After Appeal Board's Denial of Stay

DENYING

- 5.8.5 Appealability of Order Denying Summary Disposition

DES

- 6.15.3.1 Effect of Failure to Comment on Draft Environmental Statement (DES) (NEPA)

DEVELOPMENTS

- 6.5.4.1 Duty to Inform Adjudicatory Board of Significant Developments (Communication)

- 5.12.2.1.1 Effect of Subsequent Developments on Motion to Certify

- 6.5.4 Notice of Relevant Significant Developments (Communication)

DIRECTED

- 5.12.2.1 Directed Certification of Questions for Interlocutory Review

- 5.12.2.1.2 Effect of Directed Certification on Uncertified Issues

- 3.15 Interlocutory Review via Directed Certification

DIRECTOR'S

- 5.8.14 Appeal of Director's Decision on Show-Cause Petition

DISAGREEMENTS

- 3.3.3 Scheduling Disagreements Among Parties to Hearings

DISCIPLINARY

- 6.4.2 Disciplinary Matters re Attorney Conduct

DISCIPLINE

- 6.4.2.1 Jurisdiction of Special Board re Attorney Discipline and Conduct

DISCLOSURE

- 6.23 Disclosure of Information to the Public

- 6.23.3 Disclosure of Proprietary Information

- 6.23.1 Freedom of Information Act Disclosure

- 6.23.2 Privacy Act Disclosure

- 6.23.3.1 Protecting Information Where Disclosure is Sought in an Adjudicatory Proceeding

- 6.23.3.2 Security Plan Information Under 10CFR2.790(d) (Disclosure)

DISCOVERY

- 5.8.3 Appeal of Discovery Rulings

- 5.8.3.2 Appeal of Rulings Curtailing Discovery

- 5.8.3.1 Appeal of Rulings on Discovery Against Nonparties

- 2.11.6 Appeals of Discovery Rulings

NRC KWOC INDEX

DISCOVERY

- 2.11.5 Compelling Discovery
- 2.11.5.1 Compelling Discovery From ACRS and ACRS Consultants
- 2.11.2.1 Construction of Discovery Rules
- 2.11 Discovery
- 2.11.3 Discovery Against the Staff
- 6.3.3.1 Discovery Cutoff Dates for Antitrust Proceedings
- 6.3.3 Discovery in Antitrust Proceedings
- 2.11.2 Discovery Rules
- 2.9.5.11 Discovery to Frame Contentions (Intervention)
- 4.4.4 Discovery to Obtain Information to Support Reopening of Hearing
- 2.11.2.8 Interrogatories (Discovery)
- 2.11.2.4 Privileged Matter Exception to Discovery Rules
- 2.11.2.5 Protective Orders; Effect on Discovery
- 2.11.2.3 Requests for Discovery During Hearing
- 2.11.4 Responses to Discovery Requests
- 2.11.5.2 Sanctions for Failure to Comply with Discovery Orders
- 2.11.2.2 Scope of Discovery
- 2.11.1 Time for Discovery
- 2.11.2.7 Updating Discovery Responses
- 2.11.2.6 Work Product Exception to Discovery Rules

DISCRETIONARY

- 2.9.4.2 Discretionary Intervention

DISPOSITION

- 3.5.1.2 Amendments to Existing Licenses (Use of Summary Disposition)
- 5.8.5 Appealability of Order Denying Summary Disposition
- 3.5.5 Appeals From Rulings on Summary Disposition
- 3.5.1.1 Construction Permit Hearings (Use of Summary Disposition)
- 3.5.2.3 Content of Motions or Responses (Summary Disposition)
- 3.5.4 Content of Summary Disposition Order
- 3.5.2 Motions for Summary Disposition
- 3.5 Summary Disposition
- 6.1.4.3 Summary Disposition Procedures for Hearings on License or Permit Amendment
- 3.5.3 Summary Disposition Rules
- 3.5.2.1 Time for Filing Motions for Summary Disposition
- 3.5.2.2 Time for Filing Response to Summary Disposition Motion
- 3.5.1 Use of Summary Disposition

DISQUALIFICATION

- 3.1.4 Disqualification of a Licensing Board Member (Hearings)
- 5.6.7 Disqualification of Appeal Board Member
- 3.1.4.2 Grounds for Disqualification of Adjudicatory Board Member (Hearings)

NRC KWOC INDEX

DISQUALIFY	
6.4.2.2	Procedures in Special Disqualification Hearings re Attorney Conduct
5.16.1	Review of Disqualification of a Commissioner (Judicial Review)
3.1.4.1	Motion to Disqualify Adjudicatory Board Member (Hearings)
DISTINGUISHED	
3.1.2.1.1	Authority in Construction Permit Proceedings Distinguished from Authority in Operating License Proceedings
6.21.1	Rulemaking Distinguished from General Policy Statements
DOCKETING	
1.6	Docketing of License or Permit Application
DOCUMENTS	
2.9.5.8	Contentions Challenging Absent or Incomplete Documents (Intervention)
3.11.1.6	Government Documents (Rules of Evidence)
2.9.9.6	Pleadings and Documents of Intervenors
DRAFT	
6.15.3.1	Effect of Failure to Comment on Draft Environmental Statement (DES) (NEPA)
DUTIES	
3.7.1	Duties of Applicant or Licensee at Hearing (Burden and Means of Proof)
3.1.2	Powers and Duties of Licensing Board (Hearings)
DUTY	
6.5.4.1	Duty to Inform Adjudicatory Board of Significant Developments (Communication)
EARLY	
1.3	Applications for Early Site Review
6.6	Early Site Review Procedures
6.6.1	Scope of Early Site Review
EFFECTIVENESS	
5.6.5	Immediate Effectiveness of Appeal Board Decision
EFFECTS	
3.8.1	Environmental Effects Under NEPA (Burden of Persuasion at Hearing)
EIS	
6.15.7	Consideration of Class 9 Accidents in an Environmental Impact Statement (EIS)
6.15.1	Environmental Impact Statements (EIS) Under NEPA
6.15.1.1	Need to Prepare an EIS (NEPA)
6.15.2	Role of EIS (NEPA)
6.15.1.2	Scope of EIS (NEPA)
6.15.3.2	Stays Pending Remand for Inadequate EIS (NEPA)
EMPLOYEES	
6.16.5	Conduct of NRC Employees
EMPLOYMENT	
6.15.6.1.2	Socioeconomic Costs as Affected by Increased Employment and Taxes from Proposed Facility
ENDANGERED	
6.7.2	Degree of Proof Needed re Endangered Species Act
6.7	Endangered Species Act
6.7.1	Required Findings re Endangered Species Act
ENFORCEMENT	
6.10.1.1	Civil Penalties (Enforcement Actions)
6.10.1	Enforcement Actions
6.10	Inspection and Enforcement
6.10.1.2	Show-Cause Proceedings (Enforcement Actions)
ENTERTAIN	
5.15.1	Effect of Commission's Refusal to Entertain Appeal (Judicial Review)
ENVIRONMENTAL	
6.15.3	Circumstances Requiring Redrafting of Final Environmental Statement (FES)
6.15.7	Consideration of Class 9 Accidents in an Environmental Impact Statement (EIS)

NRC KWOC INDEX

ENVIRONMENTAL	
6.15.3.1	Effect of Failure to Comment on Draft Environmental Statement (DES) (NEPA)
3.7.3.5	Environmental Costs (Means of Proof)
3.8.1	Environmental Effects Under NEPA (Burden of Persuasion at Hearing)
6.15.1	Environmental Impact Statements (EIS) Under NEPA
EPA	
6.15.8.4	Relationship to EPA with Regard to Cooling Systems (Power of NRC Under NEPA)
EVIDENCE	
3.11.1.1	Admissibility of Evidence (Rules)
3.11.1.1.1	Admissibility of Hearsay Evidence (Rules)
3.11	Evidence
2.8.1.2	Evidence of Bias in Challenges to ASLB Composition
3.11.4	Evidentiary Objections (Rules of Evidence)
3.11.1.6	Government Documents (Rules of Evidence)
3.11.1.2	Hypothetical Questions (Rules of Evidence)
3.11.1.4	Off-the-Record Comments (Rules of Evidence)
2.9.9.2	Presentation of Evidence (Intervenors)
3.11.3	Presentation of Evidence by Intervenors (Rules)
3.11.1.5	Presumptions and Inferences (Rules of Evidence)
3.11.1.3	Reliance On Scientific Treatises, Newspapers, Periodicals by Expert (Rules of Evidence)
3.11.1	Rules of Evidence
3.11.2	Status of ACRS Letters (Rules of Evidence)
EVIDENTIARY	
5.10.13	Appeal of Evidentiary Rulings
3.11.4	Evidentiary Objections (Rules of Evidence)
EX-PARTE	
6.5.1	Ex-Parte Communications Rule
EXCEPTION	
5.13.3	Effect on Exception of Failure to File Proposed Findings
2.11.2.4	Privileged Matter Exception to Discovery Rules
2.11.2.6	Work Product Exception to Discovery Rules
EXCLUSION	
3.7.3.1	Exclusion Area Controls (Means of Proof)
EXISTING	
3.5.1.2	Amendments to Existing Licenses (Use of Summary Disposition)
6.1	Amendments to Existing Licenses or Construction Permits
EXPANDING	
2.9.3.4	Amendment of Petition Expanding Scope of Intervention
EXPEDITED	
3.1.2.4	Expedited Proceedings; Timing of Rulings
EXPERT	
3.12.4	Expert Witnesses
3.12.4.1	Fees for Expert Witnesses
3.11.1.3	Reliance On Scientific Treatises, Newspapers, Periodicals by Expert (Rules of Evidence)
EXPERTS	
3.13.2	Cross-Examination by Experts
EXPORT	
6.29.2.2	Export License Criteria
3.2	Export Licensing Hearings
6.29.2	Export Licensing Procedures

NRC KWOC INDEX

EXPORT

- 3.4.6 Export Licensing Proceedings Issues
- 6.29.2.1 Jurisdiction of Commission re Export Licensing
- 3.2.1 Scope of Export Licensing Hearings

- 2.9.4.1.3 Standing to Intervene in Export Licensing Cases

EXTENSION

- 3.4.5 Construction Permit Extension Proceedings

EXTENSIONS

- 5.10.2.1 Time Extensions for Brief on Appeal
- 3.3.2.4 Time Extensions for Case Preparation Before Hearing

FACILITY

- 6.1.6 Facility Changes Without License Amendments
- 3.7.3.2 Need for Facility (Means of Proof)
- 6.15.5 Need for Facility (NEPA Considerations)
- 6.15.6.1.2 Socioeconomic Costs as Affected by Increased Employment and Taxes from Proposed Facility
- 6.28 Termination of Facility Licenses

FACT

- 5.8.15 Appeal of Findings of Fact
- 5.6.3 Standards for Reversing Licensing Board on Findings of Fact (Appeal)

FACTORS

- 3.3.2.1 Factors Considered in Hearing Postponement

FACTS

- 3.10 Official Notice of Facts

FACTUAL

- 2.9.4.1.4 Standing to Intervene in Specific Factual Situations

FAILURE

- 6.15.3.1 Effect of Failure to Comment on Draft Environmental Statement (DES) (NEPA)
- 5.5.2 Effect on Appeal of Failure to File Proposed Findings
- 5.13.3 Effect on Exception of Failure to File Proposed Findings
- 5.11.1 Failure to Appear for Oral Argument
- 4.2.2 Failure to File Proposed Findings (Post-Hearing Matters)
- 2.11.5.2 Sanctions for Failure to Comply with Discovery Orders

FALSE

- 1.5.2 Material False Statements in Applications for License or Permit

FARMLAND

- 3.7.3.5.1 Cost of Withdrawing Farmland from Production (Means of Proof)
- 6.15.6.1.1 Cost of Withdrawing Farmland from Production (NEPA Considerations)

FEDERAL

- 1.7.1 Publication of Notice in Federal Register
- 2.5.3 Publication of Notice of Hearing in Federal Register

FEES

- 3.12.4.1 Fees for Expert Witnesses

FES

- 6.15.3 Circumstances Requiring Redrafting of Final Environmental Statement (FES)

FILE

- 5.13.3 Effect of Failure to File Proposed Findings
- 5.5.2 Effect on Appeal of Failure to File Proposed Findings
- 4.2.2 Failure to File Proposed Findings (Post-Hearing Matters)
- 4.2.1 Intervenor's Right to File Proposed Findings (Post-Hearing Matters)
- 2.9.9.4 Intervenor's Right to File Proposed Findings

NRC KWOC INDEX

FILING

- 5.4 Time for Filing Appeals
- 5.13.1 Time for Filing Appeals
- 2.9.3.3.1 Time for Filing Intervention Petitions
- 4.4.1.1 Time for Filing Motion to Reopen Hearing
- 3.5.2.1 Time for Filing Motions for Summary Disposition
- 3.5.2.2 Time for Filing Response to Summary Disposition Motion
- 6.14.2.1 Time for Filing Responses to Motions in NRC Proceedings

FINAL

- 6.15.3 Circumstances Requiring Redrafting of Final Environmental Statement (FES)

FINANCIAL

- 2.9.10.1 Financial Assistance to Intervenor
- 6.8 Financial Qualifications

FINDINGS

- 5.8.15 Appeal of Findings of Fact
- 5.5.2 Effect on Appeal of Failure to File Proposed Findings
- 5.13.3 Effect on Exception of Failure to File Proposed Findings
- 4.2.2 Failure to File Proposed Findings (Post-Hearing Matters)
- 3.16.1 Independent Calculations by Licensing Board (Findings)
- 4.2.1 Intervenor's Right to File Proposed Findings (Post-Hearing Matters)
- 2.9.9.4 Intervenor's Right to File Proposed Findings
- 3.16 Licensing Board Findings
- 4.2 Proposed Findings (Post-Hearing Matters)
- 6.7.1 Required Findings re Endangered Species Act
- 5.6.3 Standards for Reversing Licensing Board on Findings of Fact (Appeal)

FIRST

- 5.5.1 Issues Raised for the First Time on Appeal

FOREIGN

- 6.29.1 Military or Foreign Affairs Functions (Procedures)

FORM

- 1.4 Form of Application for Construction Permit or Operating License
- 1.4.1 Form of Application for Initial License or Permit
- 6.14.1 Form of Motion in NRC Proceedings
- 1.4.2 Form of Renewal Application for License or Permit

FREEDOM

- 6.23.1 Freedom of Information Act Disclosure

FUEL

- 6.15.9 Spent Fuel Pool Proceedings (NEPA)

FUNCTIONS

- 6.29.1 Military or Foreign Affairs Functions (Procedures)

FWPCA

- 6.15.8.5 NRC Power Under NEPA with Regard to FWPCA

GENERIC

- 6.9.1 Consideration of Generic Issues in Licensing Proceedings
- 5.5.4 Consolidation of Appeals on Generic Issues
- 2.9.5.7 Contentions Involving Generic Issues (Intervention)
- 6.9.2 Effect of Unresolved Generic Issues
- 6.9.2.1 Effect of Unresolved Generic Issues in Construction Permit Proceedings

NRC KWOC INDEX

GENERIC

6.9.2.2 Effect of Unresolved Generic Issues in Operating License Proceedings

6.9 Generic Issues

6.21.2 Generic Issues and Rulemaking

4.4.3 Reopening Construction Permit Hearings to Address New Generic Issues

GOVERNMENT

3.11.1.6 Government Documents (Rules of Evidence)

GRANTS

2.9.6 Conditions on Grants of Intervention

GROUND

5.8.6 Appeal on Grounds of Procedural Irregularities

3.1.4.2 Grounds for Disqualification of Adjudicatory Board Member (Hearings)

5.6.4 Grounds for Immediate Suspension of Construction Permit by Appeal Board

5.11.2 Grounds for Postponement of Oral Argument

4.4.2 Grounds for Reopening Hearing

6.24.1.1 Grounds for Show-Cause Order

3.13.3 Inability to Cross-Examine as Grounds to Reopen

GUIDES

6.20.3 Regulatory Guides

6.16.2 Status of NRC Staff Regulatory Guides

HEARING

2.5.2 Adequacy of Notice of Hearing

3.3.4 Appeals of Hearing Date Rulings (Scheduling)

2.9.9.5 Attendance at or Participation in Prehearing Conference or Hearing

3.7 Burden and Means of Proof at Hearing

3.8 Burden of Persuasion at Hearing (Degree of Proof)

3.1.2.7 Conduct of Hearing by Licensing Board

4.4.1.2 Contents of Motion to Reopen Hearing

2.5.1 Contents of Notice of Hearing

3.3.5.2 Convenience of Litigants Affecting Hearing Location (Scheduling)

3.3.1.2 Convenience of Litigants re Hearing Schedule

3.13 Cross-Examination at Hearing

4.4.4 Discovery to Obtain Information to Support Reopening of Hearing

3.7.1 Duties of Applicant or Licensee at Hearing (Burden and Means of Proof)

3.3.2.2 Effect of Plant Deferral on Hearing Postponement

3.8.1 Environmental Effects Under NEPA (Burden of Persuasion at Hearing)

3.3.2.1 Factors Considered in Hearing Postponement

4.4.2 Grounds for Reopening Hearing

6.1.4 Hearing Requirements for License or Permit Amendments

3.3 Hearing Scheduling Matters

3.4.1 Intervenor's Contentions (Admissibility at Hearing)

6.1.4.2 Intervention in Hearing on License or Permit Amendments

NRC KWOC INDEX

HEARING

- 3.4 Issues for Hearing
 - 3.4.3 Issues Not Addressed by a Party at Hearing
 - 3.4.2 Issues Not Raised by Parties at Hearing
- 2.3 Location of Hearing
 - 3.3.5 Location of Hearing (Scheduling)
- 3.14.3 Material Not Contained in Hearing Record
- 4.4.1 Motions to Reopen Hearing
- 2.2 Necessity of Hearing
 - 6.24.7 Necessity of Hearing in Show-Cause Proceedings
- 2.5 Notice of Hearing
 - 6.1.4.1 Notice of Hearing on License or Permit Amendments
- 6.24.4 Notice of Hearing on Show-Cause to Licensee or Permittee
- 6.1.5 Primary Jurisdiction in Appeal Board to Consider License Amendment in Special Hearing
- 2.3.1 Public Interest Requirements Affecting Hearing Location
 - 3.3.5.1 Public Interest Requirements re Hearing Location (Scheduling)
 - 3.3.1.1 Public Interest Requirements re Hearing Schedule
- 2.5.3 Publication of Notice of Hearing in Federal Register
- 3.1.3 Quorum Requirements for Licensing Board Hearing
- 3.14 Record of Hearing
 - 3.14.2 Reopening Hearing Record
- 2.11.2.3 Requests for Discovery During Hearing
- 2.5.4 Requirement to Retest (Hearing)
- 2.9.9 Rights of Intervenor at Hearing
 - 3.3.2.3 Sudden Absence of ASLB Member at Hearing (Scheduling)
- 3.14.1 Supplementing Hearing Record by Affidavits
 - 3.3.2.4 Time Extensions for Case Preparation Before Hearing
- 3.12 Witnesses at Hearing

HEARINGS

- 3.3.1.3 Adjourned Hearings
- 3.6 Attendance at and Participation in Hearings
 - 3.3.6 Consolidation of Hearings (Scheduling)
- 3.5.1.1 Construction Permit Hearings (Use of Summary Disposition)
- 3.1.4 Disqualification of a Licensing Board Member (Hearings)
- 3.2 Export Licensing Hearings
 - 3.1.1 General Role of Licensing Board (Hearings)
 - 3.1.4.2 Grounds for Disqualification of Adjudicatory Board Member (Hearings)
- 3.0 HEARINGS
 - 3.1.4.3 Improperly Influencing an Adjudicatory Board Decision (Hearings)

NRC KWOC INDEX

HEARINGS

- 3.3.7 In-Camera Hearings (Scheduling)
- 3.1 Licensing Board Hearings
- 6.1.4.4 Matters Considered in Hearings on License Amendments
- 3.1.4.1 Motion to Disqualify Adjudicatory Board Member (Hearings)
- 3.3.2 Postponement of Hearings
- 3.1.2 Powers and Duties of Licensing Board (Hearings)
- 6.29 Procedures in Other Types of Hearings
- 6.4.2.2 Procedures in Special Disqualification Hearings re Attorney Conduct
- 4.4.3 Reopening Construction Permit Hearings to Address New Generic Issues
- 4.4 Reopening Hearings
- 3.1.5 Resignation of a Licensing Board Member (Hearings)
- 3.3.3 Scheduling Disagreements Among Parties to Hearings
- 3.3.1 Scheduling of Hearings
- 3.2.1 Scope of Export Licensing Hearings
- 3.4.4 Separate Hearings on Special Issues
- 6.1.4.3 Summary Disposition Procedures for Hearings on License or Permit Amendment

HEARSAY

- 3.11.1.1.1 Admissibility of Hearsay Evidence (Rules)

HOW

- 5.3 How to Appeal

HYPOTHETICAL

- 3.11.1.2 Hypothetical Questions (Rules of Evidence)

IMMEDIATE

- 5.6.4 Grounds for Immediate Suspension of Construction Permit by Appeal Board

- 5.6.5 Immediate Effectiveness of Appeal Board Decision

IMPACT

- 6.15.7 Consideration of Class 9 Accidents in an Environmental Impact Statement (EIS)

- 6.15.1 Environmental Impact Statements (EIS) Under NEPA

IMPORTANCE

- 5.8.7 Appeal of Matters of Recurring Importance

IMPROPERLY

- 3.1.4.3 Improperly Influencing an Adjudicatory Board Decision (Hearings)

IN-CAMERA

- 3.3.7 In-Camera Hearings (Scheduling)

INABILITY

- 3.13.3 Inability to Cross-Examine as Grounds to Reopen

INADEQUATE

- 6.15.3.2 Stays Pending Remand for Inadequate EIS (NEPA)

INCOMPLETE

- 2.9.5.8 Contentions Challenging Absent or Incomplete Documents (Intervention)

- 1.5.1 Incomplete Applications for License or Permit

INCREASED

- 6.15.6.1.2 Socioeconomic Costs as Affected by Increased Employment and Taxes from Proposed Facility

INDEPENDENT

- 3.16.1 Independent Calculations by Licensing Board (Findings)

INFERENCES

- 3.11.1.5 Presumptions and Inferences (Rules of Evidence)

INFLUENCING

- 3.1.4.3 Improperly Influencing an Adjudicatory Board Decision (Hearings)

INFORM

- 6.5.4.1 Duty to Inform Adjudicatory Board of Significant Developments (Communication)

NRC KWOC INDEX

INFORMATION

- 6.23 Disclosure of Information to the Public
- 6.23.3 Disclosure of Proprietary Information
- 4.4.4 Discovery to Obtain Information to Support Reopening of Hearing
- 6.23.1 Freedom of Information Act Disclosure
- 6.23.3.1 Protecting Information Where Disclosure is Sought in an Adjudicatory Proceeding
- 6.23.3.2 Security Plan Information Under 10CFR2.790(d) (Disclosure)

INITIAL

- 5.8.10 Appeal of Partial Initial Decisions
- 5.13.1.1 Appeals from Initial and Partial Initial Decisions
- 5.13 Appeals from Orders, Rulings, Initial Decisions, Partial Initial Decision
- 1.4.1 Form of Application for Initial License or Permit
- 5.9.1 General Requirements for Perfecting Appeals from Initial Decision
- 4.3 Initial Decisions (Post-Hearing Matters)
- 4.3.1 Reconsideration of Initial Decision (Post-Hearing Matters)

INJURY-IN-FACT

- 2.9.4.1.1 "Injury-in-Fact" and "Zone-of-Interest" Tests of Standing to Intervene

INSPECTION

- 6.10 Inspection and Enforcement

INTEREST

- 6.4.2.3 Conflict of Interest (Attorney Conduct)
- 2.9.4 Interest and Standing for Intervention
- 2.3.1 Public Interest Requirements Affecting Hearing Location
- 3.3.5.1 Public Interest Requirements re Hearing Location (Scheduling)
- 3.3.1.1 Public Interest Requirements re Hearing Schedule

INTERESTED

- 2.10 Nonparty Participation (Limited Appearance and Interested States)
- 2.10.2 Participation by Nonparty Interested States

INTERIM

- 3.7.3.3 Burden and Means of Proof in Interim Licensing Suspension Cases

INTERLOCUTORY

- 5.12.2.1 Directed Certification of Questions for Interlocutory Review
- 3.15 Interlocutory Review via Directed Certification
- 5.12.2 Interlocutory Reviews

INTERPRETATION

- 6.20.5 Agency's Interpretation of its Own Regulations

INTERROGATORIES

- 2.11.2.8 Interrogatories (Discovery)

INTERVENE

- 2.9.4.1.1 "Injury-in-Fact" and "Zone-of-Interest" Tests for Standing to Intervene
- 2.9.3.3.3 Consideration of Untimely Petitions to Intervene
- 2.9.4.1 Judicial Standing to Intervene
- 2.9.3.3.5 Mootness of Petitions to Intervene
- 2.9.3 Petitions to Intervene
- 2.9.4.1.2 Standing of Organizations to Intervene
- 2.9.4.1.3 Standing to Intervene in Export Licensing Cases
- 2.9.4.1.4 Standing to Intervene in Specific Factual Situations

NRC KWOC INDEX

INTERVENE	
2.9.3.5	Withdrawal of Petition to Intervene
INTERVENOR	
2.9.9.2.2	Consolidation of Intervenor Presentations
2.9.8	Reinstatement of Intervenor After Withdrawal
2.9.5.3	Requirement of Contentions for Purposes of Admitting Intervenor as a Party
INTERVENOR-PARTICIPANTS	
2.9.9.2.1	Affirmative Presentation by Intervenor-Participants
INTERVENOR'S	
3.4.1	Intervenor's Contentions (Admissibility at Hearing)
3.7.2	Intervenor's Contentions (Burden and Means of Proof)
2.9.2	Intervenor's Need for Counsel
2.9.9.4	Intervenor's Right to File Proposed Findings
4.2.1	Intervenor's Right to File Proposed Findings (Post-Hearing Matters)
INTERVENORS	
2.9.11	Appeals by Interveners
2.9.9.1	Burden of Proof (Intervenors)
2.9.5	Contentions of Intervenors
2.9.9.3	Cross-Examination by Intervenors
3.13.1	Cross-Examination by Intervenors
2.9.10.1	Financial Assistance to Intervenors
2.9.10.2	Intervenors' Witnesses
2.9.9.6	Pleadings and Documents of Intervenors
2.9.9.2	Presentation of Evidence (Intervenors)
3.11.3	Presentation of Evidence by Intervenors (Rules)
2.9.5.2	Requirement of Oath from Intervenors
2.9.9	Rights of Intervenors at Hearing
INTERVENTION	
2.9.3.4	Amendment of Petition Expanding Scope of Intervention
5.8.1	Appeal of Rulings on Intervention
2.9.3.3.4	Appeals from Rulings on Late Intervention
2.9.5.13	Appeals of Rulings on Contentions (Intervention)
2.9.7	Appeals of Rulings on Intervention
2.9.6	Conditions on Grants of Intervention
2.9.5.8	Contentions Challenging Absent or Incomplete Documents (Intervention)
2.9.5.6	Contentions Challenging Regulations (Intervention)
2.9.5.7	Contentions Involving Generic Issues (Intervention)
2.9.5.9	Contentions re Adequacy of Security Plan (Intervention)
2.9.10	Cost of Intervention
2.9.5.6	Defective Contentions (Intervention)
2.9.3.2	Defects in Pleadings (Intervention)
2.9.5.11	Discovery to Frame Contentions (Intervention)

NRC KWOC INDEX

INTERVENTION

- 2.9.4.2 Discretionary Intervention
- 2.9.1 General Policy on Intervention
- 2.9.4 Interest and Standing for Intervention
- 2.9 Intervention
- 2.9.3.6 Intervention in Antitrust Proceedings
- 6.3.2 Intervention in Antitrust Proceedings
- 6.1.4.2 Intervention in Hearing on License or Permit Amendments
- 2.9.12 Intervention in Remanded Proceedings
- 6.24.8 Intervention in Show-Cause Proceedings
- 2.9.5.4 Material Used in Support of Contentions (Intervention)
- 5.5.3 Matters Considered on Appeal of Ruling Allowing Late Intervention
- 2.9.3.1 Pleading Requirements (Intervention)
- 2.9.5.1 Pleading Requirements for Contentions (Intervention)
- 2.9.7.1 Standards for Reversal of Rulings on Intervention
- 2.9.5.12 Stipulations on Contentions (Intervention)
- 2.9.3.3.2 Sufficiency of Notice of Time Limits on Intervention
- 2.9.3.3.1 Time for Filing Intervention Petitions
- 2.9.3.3 Time Limits or Late Petitions (Intervention)
- 2.9.5.5 Timeliness of Submission of Contentions (Intervention)

INVOLVING

- 2.9.5.7 Contentions Involving Generic Issues (Intervention)

IRREGULARITIES

- 5.8.6 Appeal on Grounds of Procedural Irregularities

ISSUES

- 3.1.2.3 Authority of Licensing Board to Raise Sua-Sponte Issues
- 6.9.1 Consideration of Generic Issues in Licensing Proceedings
- 5.5.4 Consolidation of Appeals on Generic Issues
- 2.9.5.7 Contentions Involving Generic Issues (Intervention)
- 5.12.2.1.2 Effect of Directed Certification on Uncertified Issues
- 6.9.2 Effect of Unresolved Generic Issues
- 6.9.2.1 Effect of Unresolved Generic Issues in Construction Permit Proceedings
- 6.9.2.2 Effect of Unresolved Generic Issues in Operating License Proceedings
- 3.4.6 Export Licensing Proceedings Issues
- 6.9 Generic Issues
- 6.21.2 Generic Issues and Rulemaking
- 3.4 Issues for Hearing
- 6.24.1.3 Issues in Show-Cause Proceedings

ISSUES

- 3.4.3 Issues Not Addressed by a Party at Hearing
- 3.4.2 Issues Not Raised by Parties at Hearing

NRC KWOC INDEX

ISSUES

5.5.1 Issues Raised for the First Time on Appeal

4.4.3 Reopening Construction Permit Hearings to Address New Generic Issues

3.4.4 Separate Hearings on Special Issues

3.7.3 Specific Issues (Means of Proof)

ISSUING

6.24.2 Standards for Issuing Show-Cause Order

JOINDER

5.8.4 Refusal to Compel Joinder of Parties (Appealability)

JUDICIAL

5.16.1 Review of Disqualification of a Commissioner (Judicial Review)

5.15.1 Effect of Commission's Refusal to Entertain Appeal (Judicial Review)

5.15 Judicial Review of Appeal Board Decisions

2.9.4.1 Judicial Standing to Intervene

5.18 Jurisdiction of NRC to Consider Matters While Judicial Review is Pending (Appeal)

5.15.2 Stays Pending Judicial Review of Appeal Board Decision

5.7.2 Stays Pending Remand After Judicial Review

5.15.3 Stays Pending Remand After Judicial Review of Appeal Board Decision

JURISDICTION

6.29.2.1 Jurisdiction of Commission re Export Licensing

5.18 Jurisdiction of NRC to Consider Matters While Judicial Review is Pending (Appeal)

6.4.2.1 Jurisdiction of Special Board re Attorney Discipline and Conduct

5.19.2 Jurisdiction of the Appeal Board on Remand

5.19.1 Jurisdiction of the Licensing Board on Remand

6.1.5 Primary Jurisdiction in Appeal Board to Consider License Amendment in Special Hearing

3.1.2.1 Scope of Jurisdiction of the Licensing Board

JURISDICTIONS

3.1.2.6 Licensing Board's Relationship with Other Agencies, Jurisdictions

LATE

2.9.3.3.4 Appeals from Rulings on Late Intervention

5.5.3 Matters Considered on Appeal of Ruling Allowing Late Intervention

2.9.3.3 Time Limits on Late Petitions (Intervention)

LETTERS

3.11.2 Status of ACRS Letters (Rules of Evidence)

LICENSE

1.10 Abandonment of Application for License or Permit

6.2 Amendments to License or Permit Applications

1.1 Applicants for License or Permit

1.0 APPLICATION FOR LICENSE OR PERMIT

3.1.2.1.1 Authority in Construction Permit Proceedings Distinguished from Authority in Operating License Proceedings

1.5 Contents of Application for License or Permit

1.6 Docketing of License or Permit Application

6.9.2.2 Effect of Unresolved Generic Issues in Operating License Proceedings

6.29.2.2 Export License Criteria

NRC KWOC INDEX

LICENSE

- 6.1.6 Facility Changes Without License Amendments
- 1.4 Form of Application for Construction Permit or Operating License
- 1.4.1 Form of Application for Initial License or Permit
- 1.4.2 Form of Renewal Application for License or Permit
- 6.1.4 Hearing Requirements for License or Permit Amendments
- 1.5.1 Incomplete Applications for License or Permit
- 6.1.4.2 Intervention in Hearing on License or Permit Amendments
- 1.5.2 Material False Statements in Applications for License or Permit
- 6.1.4.4 Matters Considered in Hearings on License Amendments
- 6.1.3 Matters to be Considered in License Amendment Proceedings
- 6.1.4.1 Notice of Hearing on License or Permit Amendments
- 1.7 Notice of License or Permit Application
- 1.7.3 Notice on License Renewal
- 6.1.5 Primary Jurisdiction in Appeal Board to Consider License Amendment in Special Hearing
- 1.2 Renewal Applications for License or Permit
- 6.1.3.1 Specific Matters Considered in License Amendment Proceedings
- 1.8 Staff Review of License or Permit Application
- 6.1.1 Staff Review of Proposed License or Permit Amendments
- 6.1.4.3 Summary Disposition Procedures for Hearings on License or Permit Amendment
- 6.26 Suspension, Revocation or Modification of License
- 1.9 Withdrawal of Application for License or Permit

LICENSEE

- 3.7.1 Duties of Applicant or Licensee at Hearing (Burden and Means of Proof)
- 6.24.4 Notice of Hearing on Show-Cause to Licensee or Permittee
- 6.16.1.1 NRC Staff Demands on Applicant or Licensee

LICENSES

- 3.5.1.2 Amendments to Existing Licenses (Use of Summary Disposition)
- 6.1 Amendments to Existing Licenses or Construction Permits
- 6.1.2 Amendments to Research Reactor Licenses
- 6.13 Materials Licenses
- 6.28 Termination of Facility Licenses

LICENSING

- 5.8.11 Appeal of Other Licensing Actions
- 3.1.2.3 Authority of Licensing Board to Raise Sua-Sponte Issues
- 3.7.3.3 Burden and Means of Proof in Interim Licensing Suspension Cases
- 6.17.1 Compliance with Licensing and Appeal Board Orders
- 3.1.2.7 Conduct of Hearing by Licensing Board
- 6.9.1 Consideration of Generic Issues in Licensing Proceedings
- 3.1.4 Disqualification of a Licensing Board Member (Hearings)

NRC KWOC INDEX

LICENSING

- 3.2 Export Licensing Hearings
- 6.29.2 Export Licensing Procedures
- 3.4.6 Export Licensing Proceedings Issues
- 3.1.1 General Role of Licensing Board (Hearings)
- 3.16.1 Independent Calculations by Licensing Board (Findings)
- 6.29.2.1 Jurisdiction of Commission re Export Licensing
- 5.19.1 Jurisdiction of the Licensing Board on Remand
- 6.14.3 Licensing Board Actions on Motions in NRC Proceedings
- 3.1.2.6 Licensing Board's Relationship with Other Agencies, Jurisdictions
- 3.1.2.5 Licensing Board's Relationship with the NRC Staff
- 3.16 Licensing Board Findings
- 3.1 Licensing Board Hearings
- 6.16.1 NRC Staff Role in Licensing Proceedings
- 6.17 Orders of Licensing and Appeal Boards
- 3.1.2 Powers and Duties of Licensing Board (Hearings)
- 6.4.1 Practice Before Licensing or Appeal Boards (Attorney Conduct)
- 6.4.1.1 Professional Decorum Before Licensing or Appeal Boards (Attorney Conduct)
- 3.1.3 Quorum Requirements for Licensing Board Hearing
- 3.1.5 Resignation of a Licensing Board Member (Hearings)
- 3.2.1 Scope of Export Licensing Hearings
- 3.1.2.1 Scope of Jurisdiction of the Licensing Board
- 5.6.3 Standards for Reversing Licensing Board on Findings of Fact (Appeal)
- 2.9.4.1.3 Standing to Intervene in Export Licensing Cases

LIMITATIONS

- 2.10.1.2 Scope and Limitations of Limited Appearances by Nonparties
- ## LIMITED
- 2.10.1 Limited Appearances by Nonparties Before NRC Adjudicatory Proceedings
 - 6.19.2 Limited Work Authorization (Pre-permit Activities)
 - 2.10 Nonparty Participation (Limited Appearance and Interested States)
 - 2.10.1.1 Requirements for Limited Appearance by Nonparties
 - 2.10.1.2 Scope and Limitations of Limited Appearances by Nonparties

LIMITS

- 2.9.3.3.2 Sufficiency of Notice of Time Limits on Intervention
- 2.9.3.3 Time Limits on Late Petitions (Intervention)
- 5.13.1.2 Variation in Time Limits on Appeals

LINE

- 6.15.8.2 Transmission Line Routing (Power of NRC Under NEPA)

LITIGANTS

- 3.3.5.2 Convenience of Litigants Affecting Hearing Location (Scheduling)
- 3.3.1.2 Convenience of Litigants re Hearing Schedule

LOCATION

- 3.3.5.2 Convenience of Litigants Affecting Hearing Location (Scheduling)

NRC KWOC INDEX

LOCATION	
2.3	Location of Hearing
3.3.5	Location of Hearing (Scheduling)
2.3.1	Public Interest Requirements Affecting Hearing Location
3.3.5.1	Public Interest Requirements re Hearing Location (Scheduling)
LWA	
6.19.2.1	LWA Status Pending Remand Proceedings (Pre-permit Activities)
MAJOR	
5.14	Certification of Major or Novel Questions to the Commission
MANAGEMENT	
3.7.3.7	Management Capability (Means of Proof)
MASTERS	
6.11	Masters in NRC Proceedings
MATERIAL	
1.5.2	Material False Statements in Applications for License or Permit
3.14.3	Material Not Contained in Hearing Record
2.9.5.4	Material Used in Support of Contentions (Intervention)
MATERIALS	
6.13	Materials Licenses
MATTER	
2.11.2.4	Privileged Matter Exception to Discovery Rules
MEANS	
3.7.3.6	Alternate Sites Under NEPA (Means of Proof)
3.7.3.4	Availability of Uranium Supply (Means of Proof)
3.7	Burden and Means of Proof at Hearing
3.7.3.3	Burden and Means of Proof in Interim Licensing Suspension Cases
3.7.3.5.1	Cost of Withdrawing Farmland from Production (Means of Proof)
3.7.1	Duties of Applicant or Licensee at Hearing (Burden and Means of Proof)
3.7.3.5	Environmental Costs (Means of Proof)
3.7.3.1	Exclusion Area Controls (Means of Proof)
3.7.2	Intervenor's Contentions (Burden and Means of Proof)
3.7.3.7	Management Capability (Means of Proof)
3.7.3.2	Need for Facility (Means of Proof)
3.7.3	Specific Issues (Means of Proof)
MEMBER	
3.1.4	Disqualification of a Licensing Board Member (Hearings)
5.6.7	Disqualification of Appeal Board Member
3.1.4.2	Grounds for Disqualification of Adjudicatory Board Member (Hearings)
3.1.4.1	Motion to Disqualify Adjudicatory Board Member (Hearings)
3.1.5	Resignation of a Licensing Board Member (Hearings)
3.3.2.3	Sudden Absence of ASLB Member at Hearing (Scheduling)
MEMBERS	
3.12.1.2	ACRS Members as Witnesses
MILITARY	
6.29.1	Military or Foreign Affairs Functions (Procedures)
MODIFICATION	
6.26	Suspension, Revocation or Modification of License
MOOTNESS	
2.9.3.3.5	Mootness of Petitions to Intervene
MOTION	
4.4.1.2	Contents of Motion to Reopen Hearing

NRC KWOC INDEX

MOTION

- 2.8.1.1 Contents of Prehearing Motion Challenging ASLB Composition
- 5.12.2.1.1 Effect of Subsequent Developments on Motion to Certify
- 6.14.1 Form of Motion in NRC Proceedings
- 3.1.4.1 Motion to Disqualify Adjudicatory Board Member (Hearings)
- 4.4.1.1 Time for Filing Motion to Reopen Hearing
- 3.5.2.2 Time for Filing Response to Summary Disposition Motion

MOTIONS

- 3.5.2.3 Content of Motions or Responses (Summary Disposition)
- 6.14.3 Licensing Board Actions on Motions in NRC Proceedings
- 4.7 Motions for Post-Judgment Relief
- 3.5.2 Motions for Summary Disposition
- 6.14 Motions in NRC Proceedings
- 4.5 Motions to Reconsider
- 5.12.1 Motions to Reconsider
- 4.4.1 Motions to Reopen Hearing
- 15.13.4 Motions to Strike Appeal
- 2.8 Prehearing Motions
- 2.8.1 Prehearing Motions Challenging ASLB Composition
- 6.14.2 Responses to Motions in NRC Proceedings
- 3.1.2.2 Scope of Authority to Rule on Petitions and Motions
- 3.5.2.1 Time for Filing Motions for Summary Disposition
- 6.14.2.1 Time for Filing Responses to Motions in NRC Proceedings

NECESSITY

- 5.10.1 Necessity of Brief on Appeal
- 2.2 Necessity of Hearing
- 6.24.7 Necessity of Hearing in Show-Cause Proceedings

NEED

- 2.9.2 Intervenor's Need for Counsel
- 3.7.3.2 Need for Facility (Means of Proof)
- 6.15.5 Need for Facility (NEPA Considerations)
- 6.15.1.1 Need to Prepare an EIS (NEPA)

NEEDED

- 6.7.2 Degree of Proof Needed re Endangered Species Act

NEPA

- 3.7.3.6 Alternate Sites Under NEPA (Means of Proof)
- 6.15.4 Alternatives (NEPA Considerations)
- 6.15.3 Circumstances Requiring Redrafting of Final Environmental Statement (FES)
- 6.15.6.1 Consideration of Specific Costs Under NEPA
- 6.15.6.1.1 Cost of Withdrawing Farmland from Production (NEPA Considerations)
- 6.15.6 Cost-Benefit Analysis Under NEPA
- 6.15.3.1 Effect of Failure to Comment on Draft Environmental Statement (DES) (NEPA)

NRC KWOC INDEX

NEPA

- 3.8.1 Environmental Effects Under NEPA (Burden of Persuasion at Hearing)
- 6.15.1 Environmental Impact Statements (EIS) Under NEPA
- 6.15.5 Need for Facility (NEPA Considerations)
- 6.15.1.1 Need to Prepare an EIS (NEPA)
- 6.15 NEPA Considerations
- 6.15.8.5 NRC Power Under NEPA with Regard to FWPCA
- 6.15.4.1 Obviously Superior Standard for Site Selection (NEPA Alternatives)
- 6.15.8 Power of NRC Under NEPA
- 6.15.8.1 Powers in General (Under NEPA)
- 6.15.8.3 Pre-LWA Activities; Offsite Activities (Power of NRC Under NEPA)
- 6.15.8.4 Relationship to EPA with Regard to Cooling Systems (Power of NRC Under NEPA)
- 6.15.2 Role of EIS (NEPA)
- 6.15.1.2 Scope of EIS (NEPA)
- 6.15.9 Spent Fuel Pool Proceedings (NEPA)
- 6.15.4.2 Standards for Conducting Cost-Benefit Analysis Related to Alternate Sites
- 6.15.3.2 Stays Pending Remand for Inadequate EIS (NEPA)
- 6.15.8.2 Transmission Line Routing (Power of NRC Under NEPA)

NEW

- 1.7.2 Amended Notice After Addition of New Owners
- 4.4.3 Reopening Construction Permit Hearings to Address New Generic Issues

NEWSPAPERS

- 3.11.1.3 Reliance On Scientific Treatises, Newspapers, Periodicals by Expert (Rules of Evidence)

NONPARTIES

- 5.8.3.1 Appeal of Rulings on Discovery Against Nonparties
- 2.10.1 Limited Appearances by Nonparties Before NRC Adjudicatory Proceedings
- 5.11.3 Oral Argument by Nonparties
- 2.10.1.1 Requirements for Limited Appearance by Nonparties
- 2.10.1.2 Scope and Limitations of Limited Appearances by Nonparties

NONPARTY

- 2.10 Nonparty Participation (Limited Appearance and Interested States)
- 2.10.2 Participation by Nonparty Interested States

NOTICE

- 2.5.2 Adequacy of Notice of Hearing
- 1.7.2 Amended Notice After Addition of New Owners
- 2.5.1 Contents of Notice of Hearing
- 2.5 Notice of Hearing
- 6.1.4.1 Notice of Hearing on License or Permit Amendments
- 1.7 Notice of License or Permit Application
- 6.5.4 Notice of Relevant Significant Developments (Communication)
- 1.7.3 Notice on License Renewal
- 6.24.4 Notice or Hearing on Show-Cause to Licensee or Permittee

NRC KWOC INDEX

NOTICE

3.10 Official Notice of Facts

1.7.1 Publication of Notice in Federal Register

2.5.3 Publication of Notice of Hearing in Federal Register

2.9.3.3.2 Sufficiency of Notice of Time Limits on Intervention

NOVEL

5.14 Certification of Major or Novel Questions to the Commission

NRC

6.16.5 Conduct of NRC Employees

6.14.1 Form of Motion in NRC Proceedings

5.18 Jurisdiction of NRC to Consider Matters While Judicial Review is Pending (Appeal)

5.14.3 Licensing Board Actions on Motions in NRC Proceedings

3.1.2.5 Licensing Board's Relationship with the NRC Staff

2.10.1 Limited Appearances by Nonparties Before NRC Adjudicatory Proceedings

6.11 Masters in NRC Proceedings

6.14 Motions in NRC Proceedings

6.15.8.5 NRC Power Under NEPA with Regard to FWPCA

6.16 NRC Staff

3.12.1.1 NRC Staff as Witnesses

6.16.1.1 NRC Staff Demands on Applicant or Licensee

6.16.1 NRC Staff Role in Licensing Proceedings

6.16.1.2 NRC Staff Witnesses

6.16.1.3 Post-Hearing Resolution of Outstanding Matters by the NRC Staff

6.15.8 Power of NRC Under NEPA

6.15.8.3 Pre-LWA Activities; Offsite Activities (Power of NRC Under NEPA)

6.15.8.4 Relationship to EPA with Regard to Cooling Systems (Power of NRC Under NEPA)

6.14.2 Responses to Motions in NRC Proceedings

6.16.3 Status of NRC Staff Position and Working Papers

6.16.2 Status of NRC Staff Regulatory Guides

6.16.4 Status of Standard Review Plan (NRC Staff)

6.14.2.1 Time for Filing Responses to Motions in NRC Proceedings

6.15.8.2 Transmission Line Routing (Power of NRC Under NEPA)

OATH

2.9.5.2 Requirement of Oath from Intervenors

OBJECTIONS

3.11.4 Evidentiary Objections (Rules of Evidence)

2.6.3.2 Objections to Prehearing Conference Order

OBTAIN

4.4.4 Discovery to Obtain Information to Support Reopening of Hearing

OBVIOUSLY

6.15.4.1 Obviously Superior Standard for Site Selection (NEPA Alternatives)

OFF-THE-RECORD

3.11.1.4 Off-the-Record Comments (Rules of Evidence)

OFFICIAL

3.10 Official Notice of Facts

NRC KWOC INDEX

OFFSITE	
6.15.8.3	Pre-LWA Activities; Offsite Activities (Power of NRC Under NEPA)
OPERATING	
3.1.2.1.1	Authority in Construction Permit Proceedings Distinguished from Authority in Operating License Proceedings
6.9.2.2	Effect of Unresolved Generic Issues in Operating License Proceedings
1.4	Form of Application for Construction Permit or Operating License
OPINIONS	
5.6.6.1	Precedential Effect of Unpublished Opinions of Appeal Boards
OPPORTUNITY	
5.6.2	Parties' Opportunity to be Heard on Appeal
OPPOSING	
5.10.3.1	Opposing Briefs on Appeal
ORAL	
5.11.1	Failure to Appear for Oral Argument
5.11.2	Grounds for Postponement of Oral Argument
5.11	Oral Argument
5.11.3	Oral Argument by Nonparties
ORDER	
2.6.3.3	Appeal from Prehearing Conference Order
5.8.9	Appeal of Order on Pre-LWA Activities
5.8.5	Appealability of Order Denying Summary Disposition
6.24.1.2	Burden of Proof for Show-Cause Order
3.5.4	Content of Summary Disposition Order
2.6.3.1	Effect of Prehearing Conference Order
6.24.1.1	Grounds for Show-Cause Order
2.6.3.2	Objections to Prehearing Conference Order
5.8.4.1	Order Consolidating Parties (Appealability)
6.24.1	Petition for Show-Cause Order
2.6.3	Prehearing Conference Order
6.24.3	Review of Decision on Request for Show-Cause Order
6.24.2	Standards for Issuing Show-Cause Order
ORDERS	
5.8.2	Appeal of Scheduling Orders
5.13	Appeals from Orders, Rulings, Initial Decisions, Partial Initial Decision
6.17.1	Compliance with Licensing and Appeal Board Orders
6.17	Orders of Licensing and Appeal Boards
2.11.2.5	Protective Orders; Effect on Discovery
2.11.5.2	Sanctions for Failure to Comply with Discovery Orders
ORGANIZATIONS	
2.9.4.1.2	Standing of Organizations to Intervene
OUTSTANDING	
6.16.1.3	Post-Hearing Resolution of Outstanding Matters by the NRC Staff
OWNERS	
1.7.2	Amended Notice After Addition of New Owners
PAPERS	
6.16.3	Status of NRC Staff Position and Working Papers
PARTIAL	
5.8.10	Appeal of Partial Initial Decisions

NRC KWOC INDEX

PARTIAL	
5.13.1.1	Appeals from Initial and Partial Initial Decisions
5.13	Appeals from Orders, Rulings, Initial Decisions, Partial Initial Decision
PARTICIPATION	
3.6	Attendance at and Participation in Hearings
2.9.9.5	Attendance at or Participation in Prehearing Conference or Hearing
2.10	Nonparty Participation (Limited Appearance and Interested States)
2.10.2	Participation by Nonparty Interested States
5.19.4	Participation of Parties in Remand Proceedings
PARTIES	
6.5	Communication Between Staff, Applicant, Other Parties, Adjudicatory Bodies
3.4.2	Issues Not Raised by Parties at Hearing
5.8.4.1	Order Consolidating Parties (Appealability)
5.19.4	Participation of Parties in Remand Proceedings
5.6.2	Parties' Opportunity to be Heard on Appeal
5.8.4	Refusal to Compel Joinder of Parties (Appealability)
3.3.3	Scheduling Disagreements Among Parties to Hearings
PARTY	
3.4.3	Issues Not Addressed by a Party at Hearing
2.9.5.3	Requirement of Contentions for Purposes of Admitting Intervenor as a Party
PAST	
6.18	Precedent and Adherence to Past Agency Practice
PENALTIES	
5.8.12	Appeal of Rulings on Civil Penalties
6.10.1.1	Civil Penalties (Enforcement Actions)
PENDING	
5.18	Jurisdiction of NRC to Consider Matters While Judicial Review is Pending (Appeal)
6.19.2.1	LWA Status Pending Remand Proceedings (Pre-permit Activities)
5.7.1	Requirements for a Stay Pending Appeal
5.7	Stays Pending Appeal
5.15.2	Stays Pending Judicial Review of Appeal Board Decision
5.19.3	Stays Pending Remand
5.7.2	Stays Pending Remand After Judicial Review
5.15.3	Stays Pending Remand After Judicial Review of Appeal Board Decision
6.15.3.2	Stays Pending Remand for Inadequate EIS (NEPA)
PERFECTING	
5.9.1	General Requirements for Perfecting Appeals from Initial Decision
5.9	Perfecting Appeals
PERIODICALS	
3.11.1.3	Reliance On Scientific Treatises, Newspapers, Periodicals by Expert (Rules of Evidence)
PERMIT	
1.10	Abandonment of Application for License or Permit
6.2	Amendments to License or Permit Applications
1.1	Applicants for License or Permit
1.0	APPLICATION FOR LICENSE OR PERMIT
3.1.2.1.1	Authority in Construction Permit Proceedings Distinguished from Authority in Operating License Proceedings

NRC KWOC INDEX

PERMIT

- 6.3.1 Consideration of Antitrust Matters After the Construction Permit Stage
- 3.4.5 Construction Permit Extension Proceedings
- 3.5.1.1 Construction Permit Hearings (Use of Summary Disposition)
- 1.5 Contents of Application for License or Permit
- 1.6 Docketing of License or Permit Application
- 6.9.2.1 Effect of Unresolved Generic Issues in Construction Permit Proceedings
- 1.4 Form of Application for Construction Permit or Operating License
- 1.4.1 Form of Application for Initial License or Permit
- 1.4.2 Form of Renewal Application for License or Permit
- 5.6.4 Grounds for Immediate Suspension of Construction Permit by Appeal Board
- 6.1.4 Hearing Requirements for License or Permit Amendments
- 1.5.1 Incomplete Applications for License or Permit
- 6.1.4.2 Intervention in Hearing on License or Permit Amendments
- 1.5.2 Material False Statements in Applications for License or Permit
- 6.1.4.1 Notice of Hearing on License or Permit Amendments
- 1.7 Notice of License or Permit Application
- 1.2 Renewal Applications for License or Permit
- 4.4.3 Reopening Construction Permit Hearings to Address New Generic Issues
- 1.8 Staff Review of License or Permit Application
- 6.1.1 Staff Review of Proposed License or Permit Amendments
- 6.1.4.3 Summary Disposition Procedures for Hearings on License or Permit Amendment
- 1.9 Withdrawal of Application for License or Permit

PERMITS

- 6.1 Amendments to Existing Licenses or Construction Permits

PERMITTEE

- 6.24.4 Notice or Hearing on Show-Cause to Licensee or Permittee

PERSUASION

- 3.8 Burden of Persuasion at Hearing (Degree of Proof)
- 3.8.1 Environmental Effects Under NEPA (Burden of Persuasion at Hearing)

PETITION

- 2.9.3.4 Amendment of Petition Expanding Scope of Intervention
- 5.8.14 Appeal of Director's Decision on Show-Cause Petition
- 6.24.1 Petition for Show-Cause Order

- 2.9.3.5 Withdrawal of Petition to Intervene

PETITIONERS

- 6.24.6 Consolidation of Petitioners in Show-Cause Proceedings

PETITIONS

- 2.9.3.3.3 Consideration of Untimely Petitions to Intervene
- 2.9.3.3.5 Mootness of Petitions to Intervene
- 2.9.3 Petitions to Intervene
- 3.1.2.2 Scope of Authority to Rule on Petitions and Motions
- 2.9.3.3.1 Time for Filing Intervention Petitions
- 2.9.3.3 Time Limits on Late Petitions (Intervention)

NRC KWOC INDEX

PLAN	
2.9.5.9	Contentions re Adequacy of Security Plan (Intervention)
6.23.3.2	Security Plan Information Under 10CFR2.790(d) (Disclosure)
6.16.4	Status of Standard Review Plan (NRC Staff)
PLANT	
3.3.2.2	Effect of Plant Deferral on Hearing Postponement
PLEADING	
2.9.3.1	Pleading Requirements (Intervention)
2.9.5.1	Pleading Requirements for Contentions (Intervention)
PLEADINGS	
2.9.3.2	Defects in Pleadings (Intervention)
2.9.9.6	Pleadings and Documents of Intervenor
POLICY	
6.20.2	Commission Policy Statements
2.9.1	General Policy on Intervention
6.21.1	Rulemaking Distinguished from General Policy Statements
POOL	
6.15.9	Spent Fuel Pool Proceedings (NEPA)
PROPOSED	
6.15.6.1.2	Socioeconomic Costs as Affected by Increased Employment and Taxes from Proposed Facility
POSITION	
6.16.3	Status of NRC Staff Position and Working Papers
POST-HEARING	
4.2.2	Failure to File Proposed Findings (Post-Hearing Matters)
4.3	Initial Decisions (Post-Hearing Matters)
4.2.1	Intervenor's Right to File Proposed Findings (Post-Hearing Matters)
4.0	POST-HEARING MATTERS
6.16.1.3	Post-Hearing Resolution of Outstanding Matters by the NRC Staff
4.2	Proposed Findings (Post-Hearing Matters)
4.3.1	Reconsideration of Initial Decision (Post-Hearing Matters)
4.1	Settlements and Stipulations (Post-Hearing Matters)
POST-JUDGMENT	
4.7	Motions for Post-Judgment Relief
POST-TERMINATION	
3.18.2	Post-Termination Authority of Commission
POSTPONEMENT	
3.3.2.2	Effect of Plant Deferral on Hearing Postponement
3.3.2.1	Factors Considered in Hearing Postponement
5.11.2	Grounds for Postponement of Oral Argument
3.3.2	Postponement of Hearings
POWER	
6.15.8.5	NRC Power Under NEPA with Regard to FWPCA
6.15.8	Power of NRC Under NEPA
6.15.8.3	Pre-LWA Activities; Offsite Activities (Power of NRC Under NEPA)
6.15.8.4	Relationship to EPA with Regard to Cooling Systems (Power of NRC Under NEPA)
6.15.8.2	Transmission Line Routing (Power of NRC Under NEPA)
POWERS	
3.1.2	Powers and Duties of Licensing Board (Hearings)
6.15.8.1	Powers in General (Under NEPA)
PRACTICE	
6.4.1	Practice Before Licensing or Appeal Boards (Attorney Conduct)
6.18	Precedent and Adherence to Past Agency Practice

NRC KWOC INDEX

PRE-LWA	
5.8.9	Appeal of Order on Pre-LWA Activities
6.15.8.3	Pre-LWA Activities; Offsite Activities (Power of NRC Under NEPA)
6.19.1	Pre-LWA Activity (Pre-permit)
PRE-PERMIT	
6.19.2	Limited Work Authorization (Pre-permit Activities)
6.19.2.1	LWA Status Pending Remand Proceedings (Pre-permit Activities)
6.19.1	Pre-LWA Activity (Pre-permit)
6.19	Pre-Permit Activities
PRECEDENT	
5.6.6	Effect of Appeal Board Affirmance as Precedent
6.18	Precedent and Adherence to Past Agency Practice
PRECEDENTIAL	
5.6.6.1	Precedential Effect of Unpublished Opinions of Appeal Boards
PREHEARING	
2.6.3.3	Appeal from Prehearing Conference Order
2.9.9.5	Attendance at or Participation in Prehearing Conference or Hearing
2.8.1.1	Contents of Prehearing Motion Challenging ASLB Composition
2.6.3.1	Effect of Prehearing Conference Order
2.6.3.2	Objections to Prehearing Conference Order
2.7	Prehearing Conference Calls
2.6.3	Prehearing Conference Order
2.6	Prehearing Conferences
2.0	PREHEARING MATTERS
2.8	Prehearing Motions
2.8.1	Prehearing Motions Challenging ASLB Composition
2.6.2	Special Prehearing Conferences
2.6.1	Transcripts of Prehearing Conferences
PREPARATION	
3.3.2.4	Time Extensions for Case Preparation Before Hearing
PREPARE	
6.15.1.1	Need to Prepare an EIS (NEPA)
PRESENTATION	
2.9.9.2.1	Affirmative Presentation by Intervenor-Participants
2.9.9.2	Presentation of Evidence (Intervenors)
3.11.3	Presentation of Evidence by Intervenors (Rules)
PRESENTATIONS	
2.9.9.2.2	Consolidation of Intervenor Presentations
PRESUMPTIONS	
3.11.1.5	Presumptions and Inferences (Rules of Evidence)
PRIMARY	
6.1.5	Primary Jurisdiction in Appeal Board to Consider License Amendment in Special Hearing
PRIVACY	
6.23.2	Privacy Act Disclosure
PRIVILEGED	
2.11.2.4	Privileged Matter Exception to Discovery Rules
PROCEDURAL	
5.8.6	Appeal on Grounds of Procedural Irregularities
PROCEDURE	
5.19	Procedure on Remand

NRC KWOC INDEX

PROCEDURES

- 6.6 Early Site Review Procedures
- 6.29.2 Export Licensing Procedures
- 6.29.1 Military or Foreign Affairs Functions (Procedures)
- 3.18.1 Procedures for Termination
- 6.29 Procedures in Other Types of Hearings
- 6.4.2.2 Procedures in Special Disqualification Hearings re Attorney Conduct
- 6.1.4.3 Summary Disposition Procedures for Hearings on License or Permit Amendment

PROCEEDING

- 6.23.3.1 Protecting Information Where Disclosure is Sought in an Adjudicatory Proceeding

PROCEEDINGS

- 3.1.2.1.1 Authority in Construction Permit Proceedings Distinguished from Authority in Operating License Proceedings
- 6.24.5 Burden of Proof in Show-Cause Proceedings
- 6.9.1 Consideration of Generic Issues in Licensing Proceedings
- 6.24.6 Consolidation of Petitioners in Show-Cause Proceedings
- 3.4.5 Construction Permit Extension Proceedings
- 6.3.3.1 Discovery Cutoff Dates for Antitrust Proceedings
- 6.3.3 Discovery in Antitrust Proceedings
- 6.9.2.1 Effect of Unresolved Generic Issues in Construction Permit Proceedings
- 6.9.2.2 Effect of Unresolved Generic Issues in Operating License Proceedings
- 3.1.2.4 Expedited Proceedings; Timing of Rulings
- 3.4.6 Export Licensing Proceedings Issues
- 6.14.1 Form of Motion in NRC Proceedings
- 6.3.2 Intervention in Antitrust Proceedings
- 2.9.3.6 Intervention in Antitrust Proceedings
- 2.9.12 Intervention in Remanded Proceedings
- 6.24.8 Intervention in Show-Cause Proceedings
- 6.24.1.3 Issues in Show-Cause Proceedings
- 6.14.3 Licensing Board Actions on Motions in NRC Proceedings
- 2.10.1 Limited Appearances by Nonparties Before NRC Adjudicatory Proceedings
- 6.19.2.1 LWA Status Pending Remand Proceedings (Pre-permit Activities)
- 6.11 Masters in NRC Proceedings
- 6.1.3 Matters to be Considered in License Amendment Proceedings
- 6.14 Motions in NRC Proceedings
- 6.24.7 Necessity of Hearing in Show Cause Proceedings
- 6.16.1 NRC Staff Role in Licensing Proceedings
- 5.19.4 Participation of Parties in Remand Proceedings
- 6.14.2 Responses to Motions in NRC Proceedings
- 6.24 Show-Cause Proceedings

NRC KWOC INDEX

PROCEEDINGS

- 6.10.1.2 Show-Cause Proceedings (Enforcement Actions)
- 6.1.3.1 Specific Matters Considered in License Amendment Proceedings
- 6.15.9 Spent Fuel Pool Proceedings (NEPA)
- 3.18 Termination of Proceedings
- 6.14.2.1 Time for Filing Responses to Motions in NRC Proceedings

PRODUCT

- 2.11.2.6 Work Product Exception to Discovery Rules

PRODUCTION

- 3.7.3.5.1 Cost of Withdrawing Farmland from Production (Means of Proof)
- 6.15.6.1.1 Cost of Withdrawing Farmland from Production (NEPA Considerations)

PROFESSIONAL

- 6.4.1.1 Professional Decorum Before Licensing or Appeal Boards (Attorney Conduct)

PROOF

- 3.7.3.6 Alternate Sites Under NEPA (Means of Proof)
- 3.7.3.4 Availability of Uranium Supply (Means of Proof)
- 3.7 Burden and Means of Proof at Hearing
- 3.7.3.3 Burden and Means of Proof in Interim Licensing Suspension Cases
- 3.8 Burden of Persuasion at Hearing (Degree of Proof)
- 2.9.9.1 Burden of Proof (Intervenors)
- 6.24.5 Burden of Proof in Show-Cause Proceedings
- 6.24.1.2 Burden of Proof for Show-Cause Order
- 3.7.3.5.1 Cost of Withdrawing Farmland from Production (Means of Proof)
- 6.7.2 Degree of Proof Needed re Endangered Species Act
- 3.7.1 Duties of Applicant or Licensee at Hearing (Burden and Means of Proof)
- 3.7.3.5 Environmental Costs (Means of Proof)
- 3.7.3.1 Exclusion Area Controls (Means of Proof)
- 3.7.2 Intervenor's Contentions (Burden and Means of Proof)
- 3.7.3.7 Management Capability (Means of Proof)
- 3.7.3.2 Need for Facility (Means of Proof)
- 3.7.3 Specific Issues (Means of Proof)

PROPOSED

- 5.5.2 Effect on Appeal of Failure to File Proposed Findings
- 5.13.3 Effect of Failure to File Proposed Findings
- 4.2.2 Failure to File Proposed Findings (Post-Hearing Matters)
- 4.2.1 Intervenor's Right to File Proposed Findings (Post-Hearing Matters)
- 2.9.9.4 Intervenor's Right to File Proposed Findings

PROPOSED

- 4.2 Proposed Findings (Post-Hearing Matters)
- 6.15.6.1.2 Socioeconomic Costs as Affected by Increased Employment and Taxes from Proposed Facility

- 6.1.1 Staff Review of Proposed License or Permit Amendments

PROPRIETARY

- 6.23.3 Disclosure of Proprietary Information

PROTECTING

- 6.23.3.1 Protecting Information Where Disclosure is Sought in an Adjudicatory Proceeding

NRC KWOC INDEX

PROTECTIVE	
2.11.2.5	Protective Orders; Effect on Discovery
PUBLIC	
6.23	Disclosure of Information to the Public
2.3.1	Public Interest Requirements Affecting Hearing Location
3.3.5.1	Public Interest Requirements re Hearing Location (Scheduling)
3.3.1.1	Public Interest Requirements re Hearing Schedule
PUBLICATION	
1.7.1	Publication of Notice in Federal Register
2.5.3	Publication of Notice of Hearing in Federal Register
QUALIFICATIONS	
6.8	Financial Qualifications
QUESTIONS	
5.14	Certification of Major or Novel Questions to the Commission
5.12.2.1	Directed Certification of Questions for Interlocutory Review
3.11.1.2	Hypothetical Questions (Rules of Evidence)
QUORUM	
3.1.3	Quorum Requirements for Licensing Board Hearing
RAISE	
3.1.2.3	Authority of Licensing Board to Raise Sua-Sponte Issues
REACTOR	
6.1.2	Amendments to Research Reactor Licenses
REACTORS	
6.22	Research Reactors
RECONSIDER	
5.12.1	Motions to Reconsider
4.5	Motions to Reconsider
RECONSIDERATION	
5.17	Reconsideration by the Commission
4.3.1	Reconsideration of Initial Decision (Post-Hearing Matters)
RECORD	
3.14.3	Material Not Contained in Hearing Record
3.14	Record of Hearing
3.14.2	Reopening Hearing Record
3.14.1	Supplementing Hearing Record by Affidavits
RECURRING	
5.8.7	Appeal of Matters of Recurring Importance
REDRAFTING	
6.15.3	Circumstances Requiring Redrafting of Final Environmental Statement (FES)
REFUSAL	
5.15.1	Effect of Commission's Refusal to Entertain Appeal (Judicial Review)
5.8.4	Refusal to Compel Joinder of Parties (Appealability)
REGISTER	
1.7.1	Publication of Notice in Federal Register
2.5.3	Publication of Notice of Hearing in Federal Register
REGULATIONS	
6.20.5	Agency's Interpretation of its Own Regulations
6.20.4	Challenges to Regulations
6.20.1	Compliance with Regulations
2.9.5.6	Contentions Challenging Regulations (Intervention)
6.20	Regulations
REGULATORY	
6.20.3	Regulatory Guides
6.16.2	Status of NRC Staff Regulatory Guides

NRC KWOC INDEX

REINSTATEMENT	
2.9.8	Reinstatement of Intervenor After Withdrawal
RELATED	
6.15.4.2	Standards for Conducting Cost-Benefit Analysis Related to Alternate Sites
RELATIONSHIP	
3.1.2.6	Licensing Board's Relationship with Other Agencies, Jurisdictions
3.1.2.5	Licensing Board's Relationship with the NRC Staff
6.15.8.4	Relationship to EPA with Regard to Cooling Systems (Power of NRC Under NEPA)
RELEVANT	
6.5.4	Notice of Relevant Significant Developments (Communication)
RELIANCE	
3.11.1.3	Reliance On Scientific Treatises, Newspapers, Periodicals by Expert (Rules of Evidence)
RELIEF	
4.7	Motions for Post-Judgment Relief
REMAND	
5.19.2	Jurisdiction of the Appeal Board on Remand
5.19.1	Jurisdiction of the Licensing Board on Remand
6.19.2.1	LWA Status Pending Remand Proceedings (Pre-permit Activities)
5.19.4	Participation of Parties in Remand Proceedings
5.19	Procedure on Remand
5.19.3	Stays Pending Remand
5.7.2	Stays Pending Remand After Judicial Review
5.15.3	Stays Pending Remand After Judicial Review of Appeal Board Decision
6.15.3.2	Stays Pending Remand for Inadequate EIS (NEPA)
REMANDED	
2.9.12	Intervention in Remanded Proceedings
RENEWAL	
1.4.2	Form of Renewal Application for License or Permit
1.7.3	Notice on License Renewal
1.2	Renewal Applications for License or Permit
RENOTICE	
2.5.4	Requirement to Renotice (Hearing)
REOPEN	
4.4.1.2	Contents of Motion to Reopen Hearing
3.13.3	Inability to Cross-Examine as Grounds to Reopen
4.4.1	Motions to Reopen Hearing
4.4.1.1	Time for Filing Motion to Reopen Hearing
REOPENING	
4.4.4	Discovery to Obtain Information to Support Reopening of Hearing
4.4.2	Grounds for Reopening Hearing
4.4.3	Reopening Construction Permit Hearings to Address New Generic Issues
3.14.2	Reopening Hearing Record
4.4	Reopening Hearings
REQUEST	
6.24.3	Review of Decision on Request for Show-Cause Order
REQUESTS	
2.11.2.3	Requests for Discovery During Hearing
2.11.4	Responses to Discovery Requests
REQUIRED	
6.7.1	Required Findings re Endangered Species Act
REQUIREMENT	
2.9.5.3	Requirement of Contentions for Purposes of Admitting Intervenor as a Party

NRC KWOC INDEX

REQUIREMENT	
2.9.5.2	Requirement of Oath from Intervenors
2.5.4	Requirement to Renotice (Hearing)
REQUIREMENTS	
5.9.1	General Requirements for Perfecting Appeals from Initial Decision
6.1.4	Hearing Requirements for License or Permit Amendments
2.9.3.1	Pleading Requirements (Intervention)
2.9.5.1	Pleading Requirements for Contentions (Intervention)
2.3.1	Public Interest Requirements Affecting Hearing Location
3.3.5.1	Public Interest Requirements re Hearing Location (Scheduling)
3.3.1.1	Public Interest Requirements re Hearing Schedule
3.1.3	Quorum Requirements for Licensing Board Hearing
5.7.1	Requirements for a Stay Pending Appeal
2.10.1.1	Requirements for Limited Appearance by Nonparties
REQUIRING	
6.15.3	Circumstances Requiring Redrafting of Final Environmental Statement (FES)
RES-JUDICATA	
3.17	Res-Judicata and Collateral-Estoppel
RESEARCH	
6.1.2	Amendments to Research Reactor Licenses
6.22	Research Reactors
RESIGNATION	
3.1.5	Resignation of a Licensing Board Member (Hearings)
RESOLUTION	
6.16.1.3	Post-Hearing Resolution of Outstanding Matters by the NRC Staff
RESPONSE	
3.5.2.2	Time for Filing Response to Summary Disposition Motion
RESPONSES	
3.5.2.3	Content of Motions or Responses (Summary Disposition)
2.11.4	Responses to Discovery Requests
6.14.2	Responses to Motions in NRC Proceedings
6.14.2.1	Time for Filing Responses to Motions in NRC Proceedings
2.11.2.7	Updating Discovery Responses
REVERSAL	
2.9.7.1	Standards for Reversal of Rulings on Intervention
REVERSING	
5.6.3	Standards for Reversing Licensing Board on Findings of Fact (Appeal)
REVIEW	
1.3	Applications for Early Site Review
5.12.2.1	Directed Certification of Questions for Interlocutory Review
6.6	Early Site Review Procedures
5.15.1	Effect of Commission's Refusal to Entertain Appeal (Judicial Review)
3.15	Interlocutory Review via Directed Certification
5.15	Judicial Review of Appeal Board Decisions
5.18	Jurisdiction of NRC to Consider Matters While Judicial Review is Pending (Appeal)
5.16	Review of Commission Decisions
6.24.3	Review of Decision on Request for Show-Cause Order

NRC KWOC INDEX

REVIEW

- 5.16.1 Review of Disqualification of a Commissioner (Judicial Review)
- 6.6.1 Scope of Early Site Review
- 6.5.3.1 Staff Review of Application (Communication)
- 1.8 Staff Review of License or Permit Application
- 6.1.1 Staff Review of Proposed License or Permit Amendments
- 6.16.4 Status of Standard Review Plan (NRC Staff)
- 5.15.2 Stays Pending Judicial Review of Appeal Board Decision
- 5.7.2 Stays Pending Remand After Judicial Review
- 5.15.3 Stays Pending Remand After Judicial Review of Appeal Board Decision
- 4.6 Sua-Sponte Review by the Appeal Board

REVIEWS

- 5.12.2 Interlocutory Reviews

REVOCAION

- 6.26 Suspension, Revocation or Modification of License

RIGHT

- 4.2.1 Intervenor's Right to File Proposed Findings (Post-Hearing Matters)
- 2.9.9.4 Intervenor's Right to File Proposed Findings
- 5.1 Right to Appeal

RIGHTS

- 2.9.9 Rights of Intervenors at Hearing

ROLE

- 3.1.1 General Role of Licensing Board (Hearings)
- 6.16.1 NRC Staff Role in Licensing Proceedings
- 5.6.1 Role of Appeal Board
- 6.15.2 Role of EIS (NEPA)

ROUTING

- 6.15.8.2 Transmission Line Routing (Power of NRC Under NEPA)

RULE

- 6.5.1 Ex-Parte Communications Rule
- 3.1.2.2 Scope of Authority to Rule on Petitions and Motions

RULEMAKING

- 6.21.2 Generic Issues and Rulemaking
- 6.21 Rulemaking
- 6.21.1 Rulemaking Distinguished from General Policy Statements

RULES

- 3.11.1.1 Admissibility of Evidence (Rules)
- 3.11.1.1.1 Admissibility of Hearsay Evidence (Rules)
- 2.11.2.1 Construction of Discovery Rules
- 2.11.2 Discovery Rules
- 3.11.4 Evidentiary Objections (Rules of Evidence)
- 3.11.1.6 Government Documents (Rules of Evidence)
- 3.11.1.2 Hypothetical Questions (Rules of Evidence)
- 3.11.1.4 Off-the-Record Comments (Rules of Evidence)
- 3.11.3 Presentation of Evidence by Intervenors (Rules)
- 3.11.1.5 Presumptions and Inferences (Rules of Evidence)

NRC KWOC INDEX

RULES

- 2.11.2.4 Privileged Matter Exception to Discovery Rules
- 3.11.1.3 Reliance On Scientific Treatises, Newspapers, Periodicals by Expert (Rules of Evidence)
- 3.11.1 Rules of Evidence
- 3.11.2 Status of ACRS Letters (Rules of Evidence)
- 3.5.3 Summary Disposition Rules
- 2.11.2.6 Work Product Exception to Discovery Rules

RULING

- 5.5.3 Matters Considered on Appeal of Ruling Allowing Late Intervention

RULINGS

- 5.8.8 Appeal of Advisory Decisions on Trial Rulings
- 5.8.3 Appeal of Discovery Rulings
- 5.8.13 Appeal of Evidentiary Rulings
- 5.8.3.2 Appeal of Rulings Curtailing Discovery
- 5.8.12 Appeal of Rulings on Civil Penalties
- 5.8.3.1 Appeal of Rulings on Discovery Against Nonparties
- 5.8.1 Appeal of Rulings on Intervention
- 5.13 Appeals from Orders, Rulings, Initial Decisions, Partial Initial Decision
- 2.9.3.3.4 Appeals from Rulings on Late Intervention
- 3.5.5 Appeals From Rulings on Summary Disposition
- 2.11.6 Appeals of Discovery Rulings
- 3.3.4 Appeals of Hearing Date Rulings (Scheduling)
- 2.9.5.13 Appeals of Rulings on Contentions (Intervention)
- 2.9.7 Appeals of Rulings on Intervention
- 3.1.2.4 Expedited Proceedings; Timing of Rulings
- 2.9.7.1 Standards for Reversal of Rulings on Intervention

SANCTIONS

- 2.11.5.2 Sanctions for Failure to Comply with Discovery Orders

SCHEDULE

- 3.3.1.2 Convenience of Litigants re Hearing Schedule
- 3.3.1.1 Public Interest Requirements re Hearing Schedule

SCHEDULING

- 5.8.2 Appeal of Scheduling Orders
- 3.3.4 Appeals of Hearing Date Rulings (Scheduling)
- 3.3.6 Consolidation of Hearings (Scheduling)
- 3.3.5.2 Convenience of Litigants Affecting Hearing Location (Scheduling)
- 3.3 Hearing Scheduling Matters
- 3.3.7 In-Camera Hearings (Scheduling)
- 3.3.5 Location of Hearing (Scheduling)
- 3.3.5.1 Public Interest Requirements re Hearing Location (Scheduling)
- 3.3.3 Scheduling Disagreements Among Parties to Hearings
- 3.3.1 Scheduling of Hearings
- 3.3.2.3 Sudden Absence of ASLB Member at Hearing (Scheduling)

NRC KWOC INDEX

SCIENTIFIC

3.11.1.3 Reliance On Scientific Treatises, Newspapers, Periodicals by Expert (Rules of Evidence)

SCOPE

2.9.3.4 Amendment of Petition Expanding Scope of Intervention

2.10.1.2 Scope and Limitations of Limited Appearances by Nonparties

3.1.2.2 Scope of Authority to Rule on Petitions and Motions

2.11.2.2 Scope of Discovery

6.6.1 Scope of Early Site Review

6.15.1.2 Scope of EIS (NEPA)

3.2.1 Scope of Export Licensing Hearings

3.1.2.1 Scope of Jurisdiction of the Licensing Board

SECURITY

2.9.5.9 Contentions re Adequacy of Security Plan (Intervention)

6.23.3.2 Security Plan Information Under 10CFR2.790(d) (Disclosure)

SELECTION

6.15.4.1 Obviously Superior Standard for Site Selection (NEPA Alternatives)

SEPARATE

3.4.4 Separate Hearings on Special Issues

SEQUESTRATION

3.12.2 Sequestration of Witnesses

SETTLEMENTS

4.1 Settlements and Stipulations (Post-Hearing Matters)

SHOW-CAUSE

5.8.14 Appeal of Director's Decision on Show-Cause Petition

6.24.1.2 Burden of Proof for Show-Cause Order

6.24.5 Burden of Proof in Show-Cause Proceedings

6.24.6 Consolidation of Petitioners in Show-Cause Proceedings

6.24.1.1 Grounds for Show-Cause Order

6.24.8 Intervention in Show-Cause Proceedings

6.24.1.3 Issues in Show-Cause Proceedings

6.24.7 Necessity of Hearing in Show-Cause Proceedings

6.24.4 Notice or Hearing on Show-Cause to Licensee or Permittee

6.24.1 Petition for Show-Cause Order

6.24.3 Review of Decision on Request for Show-Cause Order

6.24 Show-Cause Proceedings

6.10.1.2 Show-Cause Proceedings (Enforcement Actions)

6.24.2 Standards for Issuing Show-Cause Order

SIGNIFICANT

6.5.4.1 Duty to Inform Adjudicatory Board of Significant Developments (Communication)

6.5.4 Notice of Relevant Significant Developments (Communication)

SIMILAR

5.12 Actions Similar to Appeals

SITE

1.3 Applications for Early Site Review

6.6 Early Site Review Procedures

6.15.4.1 Obviously Superior Standard for Site Selection (NEPA Alternatives)

6.6.1 Scope of Early Site Review

NRC KWOC INDEX

SITES

3.7.3.6 Alternate Sites Under NEPA (Means of Proof)

6.15.4.2 Standards for Conducting Cost-Benefit Analysis Related to Alternate Sites

SITUATIONS

2.9.4.1.4 Standing to Intervene in Specific Factual Situations

SOCIOECONOMIC

6.15.6.1.2 Socioeconomic Costs as Affected by Increased Employment and Taxes from Proposed Facility

SPECIAL

6.4.2.1 Jurisdiction of Special Board re Attorney Discipline and Conduct

6.1.5 Primary Jurisdiction in Appeal Board to Consider License Amendment in Special Hearing

6.4.2.2 Procedures in Special Disqualification Hearings re Attorney Conduct

3.4.4 Separate Hearings on Special Issues

2.6.2 Special Prehearing Conferences

SPECIES

6.7.2 Degree of Proof Needed re Endangered Species Act

6.7 Endangered Species Act

6.7.1 Required Findings re Endangered Species Act

SPECIFIC

6.15.6.1 Consideration of Specific Costs Under NEPA

5.8 Specific Appealable Matters

3.7.3 Specific Issues (Means of Proof)

6.1.3.1 Specific Matters Considered in License Amendment Proceedings

2.9.4.1.4 Standing to Intervene in Specific Factual Situations

SPECIFICATIONS

6.27 Technical Specifications

SPENT

6.15.9 Spent Fuel Pool Proceedings (NEPA)

STAFF

6.5 Communication Between Staff, Applicant, Other Parties, Adjudicatory Bodies

2.11.3 Discovery Against the Staff

3.1.2.5 Licensing Board's Relationship with the NRC Staff

6.16 NRC Staff

3.12.1.1 NRC Staff as Witnesses

6.16.1.1 NRC Staff Demands on Applicant or Licensee

6.16.1 NRC Staff Role in Licensing Proceedings

6.16.1.2 NRC Staff Witnesses

6.16.1.3 Post-Hearing Resolution of Outstanding Matters by the NRC Staff

6.5.3.1 Staff Review of Application (Communication)

1.8 Staff Review of License or Permit Application

6.1.1 Staff Review of Proposed License or Permit Amendments

6.16.3 Status of NRC Staff Position and Working Papers

6.16.2 Status of NRC Staff Regulatory Guides

6.16.4 Status of Standard Review Plan (NRC Staff)

STAFF-APPLICANT

6.5.3 Staff-Applicant Communications

6.5.3.2 Staff-Applicant Correspondence (Communication)

NRC KWOC INDEX

STAGE	
6.3.1.	Consideration of Antitrust Matters After the Construction Permit Stage
STANDARD	
6.15.4.1	Obviously Superior Standard for Site Selection (NEPA Alternatives)
6.16.4	Status of Standard Review Plan (NRC Staff)
STANDARDS	
6.15.4.2	Standards for Conducting Cost-Benefit Analysis Related to Alternate Sites
6.24.2	Standards for Issuing Show-Cause Order
2.9.7.1	Standards for Reversal of Rulings on Intervention
5.6.3	Standards for Reversing Licensing Board on Findings of Fact (Appeal)
STANDING	
2.9.4.1.1	"Injury-in-Fact" and "Zone-of-Interest" Tests for Standing to Intervene
2.9.4	Interest and Standing for Intervention
2.9.4.1	Judicial Standing to Intervene
2.9.4.1.2	Standing of Organizations to Intervene
2.9.4.1.3	Standing to Intervene in Export Licensing Cases
2.9.4.1.4	Standing to Intervene in Specific Factual Situations
STATEMENT	
6.15.3	Circumstances Requiring Redrafting of Final Environmental Statement (FES)
6.15.7	Consideration of Class 9 Accidents in an Environmental Impact Statement (EIS)
6.15.3.1	Effect of Failure to Comment on Draft Environmental Statement (DES) (NEPA)
STATEMENTS	
6.20.2	Commission Policy Statements
6.15.1	Environmental Impact Statements (EIS) Under NEPA
1.5.2	Material False Statements in Applications for License or Permit
6.21.1	Rulemaking Distinguished from General Policy Statements
STATES	
2.10	Nonparty Participation (Limited Appearance and Interested States)
2.10.2	Participation by Nonparty Interested States
STATUS	
6.19.2.1	LWA Status Pending Remand Proceedings (Pre-permit Activities)
3.11.2	Status of ACRS Letters (Rules of Evidence)
6.16.3	Status of NRC Staff Position and Working Papers
6.16.2	Status of NRC Staff Regulatory Guides
6.16.4	Status of Standard Review Plan (NRC Staff)
STAY	
5.12.3	Application to Commission for a Stay After Appeal Board's Denial of Stay
5.7.1	Requirements for a Stay Pending Appeal
STAYS	
5.7	Stays Pending Appeal
5.15.2	Stays Pending Judicial Review of Appeal Board Decision
5.19.3	Stays Pending Remand
5.7	Stays Pending Remand After Judicial Review
5.15.3	Stays Pending Remand After Judicial Review of Appeal Board Decision
6.15.3.2	Stays Pending Remand for Inadequate EIS (NEPA)
STIPULATIONS	
4.1	Settlements and Stipulations (Post-Hearing Matters)

NRC KWOC INDEX

STIPULATIONS	Stipulations
3.9	
2.9.5.12	Stipulations on Contentions (Intervention)
STRIKE	
5.13.4	Motions to Strike Appeals
SUA-SPONTE	
3.1.2.3	Authority of Licensing Board to Raise Sua-Sponte Issues
4.6	Sua-Sponte Review by the Appeal Board
SUBMISSION	
2.9.5.5	Timeliness of Submission of Contentions (Intervention)
SUBMITTAL	
5.10.2	Time for Submittal of Brief on Appeal
SUBSEQUENT	
5.12.2.1.1	Effect of Subsequent Developments on Motion to Certify
SUFFICIENCY	
2.9.3.3.2	Sufficiency of Notice of Time Limits on Intervention
SUMMARY	
3.5.1.2	Amendments to Existing Licenses (Use of Summary Disposition)
5.8.5	Appealability of Order Denying Summary Disposition
3.5.5	Appeals From Rulings on Summary Disposition
3.5.1.1	Construction Permit Hearings (Use of Summary Disposition)
3.5.2.3	Content of Motions or Responses (Summary Disposition)
3.5.4	Content of Summary Disposition Order
3.5.2	Motions for Summary Disposition
3.5	Summary Disposition
6.1.4.3	Summary Disposition Procedures for Hearings on License or Permit Amendment
3.5.3	Summary Disposition Rules
3.5.2.1	Time for Filing Motions for Summary Disposition
3.5.2.2	Time for Filing Response to Summary Disposition Motion
3.5.1	Use of Summary Disposition
SUPERIOR	
6.15.4.1	Obviously Superior Standard for Site Selection (NEPA Alternatives)
SUPPLEMENTARY	
5.10.2.2	Supplementary Briefs on Appeal
SUPPLEMENTING	
3.14.1	Supplementing Hearing Record by Affidavits
SUPPLY	
3.7.3.4	Availability of Uranium Supply (Means of Proof)
SUPPORT	
4.4.4	Discovery to Obtain Information to Support Reopening of Hearing
2.9.5.4	Material Used in Support of Contentions (Intervention)
SUSPENSION	
3.7.3.3	Burden and Means of Proof in Interim Licensing Suspension Cases
5.6.4	Grounds for Immediate Suspension of Construction Permit by Appeal Board
6.26	Suspension, Revocation or Modification of License
SYSTEMS	
6.15.8.4	Relationship to EPA with Regard to Cooling Systems (Power of NRC Under NEPA)
TAXES	
6.15.6.1.2	Socioeconomic Costs as Affected by Increased Employment and Taxes from Proposed Facility
TECHNICAL	
6.27	Technical Specifications
TELEPHONE	
6.5.2	Telephone Conference Calls (Communication)
TERMINATION	
3.18.1	Procedures for Termination

NRC KWOC INDEX

TERMINATION	
6.28	Termination of Facility Licenses
3.18	Termination of Proceedings
TESTS	
2.9.4.1.1	"Injury-in-Fact" and "Zone-of-Interest" Tests for Standing to Intervene
TIME	
5.5.1	Issues Raised for the First Time on Appeal
2.9.3.3.2	Sufficiency of Notice of Time Limits on Intervention
5.10.2.1	Time Extensions for Brief on Appeal
3.3.2.4	Time Extensions for Case Preparation Before Hearing
2.11.1	Time for Discovery
5.4	Time for Filing Appeals
5.13.1	Time for Filing Appeals
2.9.3.3.1	Time for Filing Intervention Petitions
4.4.1.1	Time for Filing Motion to Reopen Hearing
3.5.2.1	Time for Filing Motions for Summary Disposition
3.5.2.2	Time for Filing Response to Summary Disposition Motion
6.14.2.1	Time for Filing Responses to Motions in NRC Proceedings
5.10.2	Time for Submittal of Brief on Appeal
2.9.3.3	Time Limits or Late Petitions (Intervention)
5.13.1.2	Variation in Time Limits on Appeals
TIMELINESS	
2.9.5.5	Timeliness of Submission of Contentions (Intervention)
TIMING	
3.1.2.4	Expedited Proceedings; Timing of Rulings
TRANSCRIPTS	
2.6.1	Transcripts of Prehearing Conferences
TRANSMISSION	
6.15.8.2	Transmission Line Routing (Power of NRC Under NEPA)
TREATISES	
3.11.1.3	Reliance On Scientific Treatises, Newspapers, Periodicals by Expert (Rules of Evidence)
TRIAL	
5.8.8	Appeal of Advisory Decisions on Trial Rulings
TYPES	
6.29	Procedures in Other Types of Hearings
UNCERTIFIED	
5.12.2.1.2	Effect of Directed Certification on Uncertified Issues
UNPUBLISHED	
5.6.6.1	Precedential Effect of Unpublished Opinions of Appeal Boards
UNRESOLVED	
6.9.2	Effect of Unresolved Generic Issues
6.9.2.1	Effect of Unresolved Generic Issues in Construction Permit Proceedings
6.9.2.2	Effect of Unresolved Generic Issues in Operating License Proceedings
UNTIMELY	
2.9.3.3.3	Consideration of Untimely Petitions to Intervene
UPDATING	
2.11.2.7	Updating Discovery Responses
URANIUM	
3.7.3.4	Availability of Uranium Supply (Means of Proof)
USE	
3.5.1.2	Amendments to Existing Licenses (Use of Summary Disposition)
3.5.1.1	Construction Permit Hearings (Use of Summary Disposition)

NRC KWOC INDEX

USE	
3.5.1	Use of Summary Disposition
VARIATION	
5.13.1.2	Variation in Time Limits on Appeals
WAIVER	
2.8.1.3	Waiver of Challenges to ASLB Composition
WHILE	
5.18	Jurisdiction of NRC to Consider Matters While Judicial Review is Pending (Appeal)
WITHDRAWAL	
2.9.8	Reinstatement of Intervenor After Withdrawal
1.9	Withdrawal of Application for License or Permit
2.9.3.5	Withdrawal of Petition to Intervene
WITHDRAWING	
3.7.3.5.1	Cost of Withdrawing Farmland from Production (Means of Proof)
6.15.6.1.1	Cost of Withdrawing Farmland from Production (NEPA Considerations)
WITNESS	
3.12.1	Compelling Appearance of Witness
WITNESSES	
3.12.1.2	ACRS Members as Witnesses
3.12.3	Board Witnesses
3.12.4	Expert Witnesses
3.12.4.1	Fees for Expert Witnesses
2.9.10.2	Intervenors' Witnesses
3.12.1.1	NRC Staff as Witnesses
6.16.1.2	NRC Staff Witnesses
3.12.2	Sequestration of Witnesses
3.12	Witnesses at Hearing
WORK	
6.19.2	Limited Work Authorization (Pre-permit Activities)
2.11.2.6	Work Product Exception to Discovery Rules
WORKING	
6.16.3	Status of NRC Staff Position and Working Papers
ZONE-OF-INTEREST	
2.9.4.1.1	"Injury-in-Fact" and "Zone-of-Interest" Tests for Standing to Intervene
10CFR2.790(D)	
6.23.3.2	Security Plan Information Under 10CFR2.790(d) (Disclosure)

FFFFFFFFFFFF	AA	CCCCCCCCCC	IIIIIIIIII	LL	IIIIIIIIII	TTTTTTTTTTTT	YY	YY
FFFFFFFFFFFF	AAAA	CCCCCCCCCCCC	IIIIIIIIII	LL	IIIIIIIIII	TTTTTTTTTTTT	YY	YY
FF	AA AA	CC	II	LL	II	TT	YY	YY
FF	AA AA	CC	II	LL	II	TT	YY	YY
FF	AA AA	CC	II	LL	II	TT	YY	YY
FFFFFFFFFFFF	AA	AA	CC	II	LL	TT	YYYY	
FFFFFFFFFFFF	AAAAAAAAAAAA	CC	II	LL	II	TT	YY	
FF	AAAAAAAAAAAA	CC	II	LL	II	TT	YY	
FF	AA	AA	CC	II	LL	TT	YY	
FF	AA	AA	CC	II	LL	TT	YY	
FF	AA	AA	CCCCCCCCCCCC	IIIIIIIIII	LLLLLLLLLLLL	IIIIIIIIII	TT	YY
FF	AA	AA	CCCCCCCCCCCC	IIIIIIIIII	LLLLLLLLLLLL	IIIIIIIIII	TT	YY

IIIIIIIIII	NN	NN	DDDDDDDDDD	EEEEEEEEEEEE	XX	XX
IIIIIIIIII	NNN	NN	DDDDDDDDDD	EEEEEEEEEEEE	XXX	XXX
II	NNNN	NN	DD	DD	EE	XXX
II	NN NN	NN	DD	DD	EE	XXX XXX
II	NN NN	NN	DD	DD	EE	XXXXXX
II	NN NN	NN	DD	DD	EEEEEEEE	XXXX
II	NN NN	NN	DD	DD	EEEEEEEE	XXXX
II	NN NN	NN	DD	DD	EE	XXXXXX
II	NN NN	NN	DD	DD	EE	XXX XXX
II	NN NN	NN	DD	DD	EE	XXX XXX
IIIIIIIIII	NN	NN	DDDDDDDDDD	EEEEEEEEEEEE	XXX	XXX
IIIIIIIIII	NN	N	DDDDDDDDDD	EEEEEEEEEEEE	XX	XX

(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1).

ALAB-535, 9 NRC 377(1979)	2.9.7 3.4.4
ALAB-539, 9 NRC 422(1979)	3.4.4
ALAB-544, 9 NRC 630(1979)	5.12.1
ALAB-547, 9 NRC 638(1979)	5.4
ALAB-565, 10 NRC 521(1979)	2.9.5 2.9.5.3 3.4.1 6.14
ALAB-574, 11 NRC 7(1980)	1.7.1 2.5.2 2.5.3 2.9.3.1 2.9.3.3.1 2.9.5 3.1.2.4
ALAB-582, 11 NRC 239(1980)	2.9.3.3.3 2.9.4.1.4 5.10.3 5.5.1
ALAB-586, 11 NRC 472(1980)	2.9.7 5.8.1
ALAB-590, 11 NRC 542(1980)	2.9.3.1 2.9.5.3 3.5
ALAB-629, 13 NRC 75(1981)	3.5 3.5.2.3 3.5.5 6.15.1.2
ALAB-630, 13 NRC 84(1981)	3.1.4.1 3.15 5.12.2.1
ALAB-631, 13 NRC 87(1981)	5.2
ALAB-635, 13 NRC 309(1981)	5.12.2 5.12.2.1
ALAB-671, 15 NRC 508(1982)	2.9.3.3.3
LBP-81-34, 14 NRC 637(1981)	3.5

(ALLENS CREEK NUCLEAR GENERATING STATION, UNITS 1 AND 2),

ALAB-301, 2 NRC 853(1975) 5.4
5.8.10
ALAB-585, 11 NRC 469(1980) 5.5

(ALVIN W. VOGTLE NUCLEAR PLANT, UNITS 1 AND 2),

ALAB-291, 2 NRC 404(1975) 4.4.2
4.4.3
6.1.4.4
6.15
6.5.4.1
6.9.2.1
LBP-84-35, 20 NRC 887(1984) 2.9.5.1
3.7.3.2
6.20.4
6.8

(AMENDMENT TO MATERIALS LIC. SNM-1773),

CLI-80-3, 11 NRC 185(1980) 3.3.7

(AMENDMENT TO OCONEE SNM LICENSE),

LBP-80-28, 12 NRC 459(1980) 6.15.1.2

(APPLIC. FOR CONSID. OF FACILITY EXPORT LICENSE) EXPORT LICENSE),

CLI-77-18, 5 NRC 1332(1977) 2.9.4.1.3

(APPLICATION TO EXPORT SPECIAL NUCLEAR MATERIALS),

CLI-77-16, 5 NRC 1327(1977) 3.3.6

CLI-78-4, 7 NRC 311(1978) 3.3.6

(ARKANSAS NUCLEAR-1, UNIT 2),

ALAB-94, 6 AEC 25(1973) 3.11.2

(ATLANTIC GENERATING STATION, UNITS 1 AND 2),

LBP-75-62, 2 NRC 702(1975) 2.11.5.2

LBP-78-5, 7 NRC 147(1978) 2.8.1.3

(BAILLY GENERATING STATION, NUCLEAR-1).

ALAB-192, 7 AEC 420(1974) 5.7
5.7.1

ALAB-204, 7 AEC 835(1974) 5.10.3
5.8.13
6.4.1.1

ALAB-207, 7 AEC 957(1974) 5.10.1
5.13.2

ALAB-224, 8 AEC 244(1974) 2.8.1.2
2.8.1.3
3.1.4.1
3.1.4.2
3.6
5.15.2
5.7
5.7.1
5.8.2
6.16.3

ALAB-227, 8 AEC 416(1974) 3.14.3
4.4.2

ALAB-249, 8 AEC 980(1974) 3.13.3
3.3.1.2
4.4.2

ALAB-303, 2 NRC 858(1975) 2.11.6
3.16
5.6.3
5.8.3.2

ALAB-619, 12 NRC 558(1980) 2.5.1
2.9.4.1.4
3.1.2.1
3.4
3.4.5
6.24
6.24.1.1
6.24.1.2

CLI-74-39, 8 AEC 631(1974) 4.4.2

CLI-78-7, 7 NRC 429(1978) 6.24
6.24.2
6.24.3
6.24.6

LBP-80-22, 12 NRC 191(1980) 2.9.4.1.4
6.1.4.2

LBP-80-31, 12 NRC 699(1980) 3.4.5

(BAILLY GENERATING STATION, NUCLEAR-1),
LBP-81-6, 13 NRC 253(1981) 3.4.5

(BARNWELL FUEL RECEIVING AND STORAGE STATION),
ALAB-328, 3 NRC 420(1976) 2.9.4.1.2

LBP-77-13, 5 NRC 489(1977) 2.11.2
2.11.2.2

(BARNWELL NUCLEAR FUEL PLANT SEPARATION FACILITY),
ALAB-296, 2 NRC 671(1975) 3.3.1

3.3.1.2
5.7.1
6.15.3

(BEAVER VALLEY POWER STATION, UNIT 1),
ALAB-105, 6 AEC 181(1973) 2.9.3

ALAB-109, 6 AEC 243(1973) 2.6
2.6.2
2.9.3
2.9.5.1
2.9.5.3
2.9.7.1
3.4.1
3.5
5.6.3

ALAB-310, 3 NRC 33(1976) 5.4

ALAB-408, 5 NRC 1383(1977) 3.1.2.5
4.6
6.16.1

(BEAVER VALLEY POWER STATION, UNIT 2),
LBP-74-25, 7 AEC 711(1974) 3.10

LBP-84-6, 19 NRC 393(1984) 2.10.2
2.9.4.1.1
2.9.4.1.2
2.9.5.1
2.9.5.7

(BEAVER VALLEY POWER STATION, UNITS 1 AND 2),
ALAB-172, 7 AEC 42(1974) 2.8.1.1
3.1.4.1

(BELLEFONTE NUCLEAR PLANT, UNITS 1 AND 2),
ALAB-164, 6 AEC 1143(1973) 2.8.1.2

ALAB-237, 8 AEC 654(1974) 5.2

(BIG ROCK POINT NUCLEAR PLANT),
ALAB-725, 17 NRC 562(1983) 6.20.3

(BIG ROCK POINT PLANT),
ALAB-795, 21 NRC 1(1985) 5.6.6

CLI-81-32, 14 NRC 962(1981) 2.9.3
2.9.3.1

LBP-82-19B, 15 NRC 627(1982) 3.1.2.3
3.5.2

LBP-82-51A, 16 NRC 180(1982) 4.2

LBP-82-77, 16 NRC 109(1982) 3.7

LBP-82-78, 16 NRC 110(1982) 6.15.1.1

LBP-82-8, 15 NRC 299(1982) 2.2
3.5
3.5.2.1
6.5.1

LBP-83-62, 18 NRC 708(1983) 3.1.2.1

(BIG ROCK POINT PLANT), N/A),
ALAB-636, 13 NRC 312(1981) 3.1.2.5
5.10.2.2
6.15.1.2
6.15.4
6.15.9

(BLACK FOX STATION, UNITS 1 AND 2),
ALAB-370, 5 NRC 131(1977) 4.5
5.8.3.2
5.8.4

ALAB-388, 5 NRC 640(1977) 5.10.3

ALAB-505, 8 NRC 527(1978) 5.7.1
6.4.1

(BLACK FOX STATION, UNITS 1 AND 2),

ALAB-573, 10 NRC 775(1979) 3.5
5.1
5.10.3
6.15.3

CLI-80-31, 12 NRC 264(1980) 3.4
6.15.2

CLI-80-35, 12 NRC 409(1980) 6.23.1

LBP-77-17, 5 NRC 657(1977) 2.9.4.1.1

LBP-77-18, 5 NRC 671(1977) 2.11.2.2
3.12.4.1

LBP-78-26, 8 NRC 102(1978) 6.15.1
6.15.6
6.19.2

LBP-78-28, 8 NRC 281(1978) 6.15

(BRAIDWOOD NUCLEAR POWER STATION, UNITS 1 AND 2),

LBP-85-11, 21 NRC 609(1985) 2.9.5
2.9.5.1
2.9.5.5
3.17
6.5.4.1

LBP-85-20, 21 NRC 1732(1985) 2.9.5
2.9.5.1
2.9.5.4
3.13.1

(BROWNS FERRY NUCLEAR PLANT, UNITS 1 AND 2),

ALAB-341, 4 NRC 95(1976) 2.9.3.3.2
2.9.3.3.3

LBP-76-10, 3 NRC 209(1976) 2.9.3.1
2.9.5.1

(BROWNS FERRY NUCLEAR PLANT, UNITS 1, 2 AND 3)),

ALAB-677, 15 NRC 138(1982) 6.5.4.1

LBP-73-29, 6 AEC 682(1973) 3.5

(BROWNS FERRY NUCLEAR PLANT, UNITS 1, 2, AND 3).),

CLI-82-26, 16 NRC 880(1982) 5.15

(BRYON STATION, UNITS 1 AND 2),
LBP-82-5, 15 NRC 209(1982) 2.11.5.2

(BRYON NUCLEAR POWER STATION, UNITS 1 AND 2),
ALAB-678, 15 NRC 140(1982) 2.11.4
2.11.5.2
6.16.1

(BYRON NUCLEAR POWER STATION, UNITS 1 AND 2),
ALAB-659, 14 NRC 983(1981) 4.3.1
5.4

ALAB-735, 18 NRC 19(1983) 3.15
5.12.1

ALAB-770, 19 NRC 1163(1984) 5.19.2

ALAB-793, 20 NRC 1591(1984) 3.1.2.5
4.6
5.10.3
5.2
6.16.1.3

LBP-83-40, 18 NRC 93(1983) 3.11.1.5
6.23.1

LBP-83-41, 18 NRC 104(1983) 3.14.2
4.4.1
4.4.2

LBP-84-2, 19 NRC 36(1984) 3.1.2.5
6.16.1.3

(BYRON STATION, UNITS 1 AND 2),
LBP-80-30, 12 NRC 683(1980) 2.9.5.1
2.9.5.6
2.9.5.7
2.9.5.8
6.15.5

LBP-81-30-A, 14 NRC 364(1981) 2.11.1
2.11.4
2.9.3
3.1.2.2

LBP-81-52, 14 NRC 901(1981) 2.11.4

(CALLAWAY PLANT, UNIT 1),
ALAB-740, 18 NRC 343(1983) 3.10
3.4
5.10.3

ALAB-750, 18 NRC 1205(1983) 3.1.2.1
3.14.2
6.24
6.5.4.1

ALAB-754, 18 NRC 1333(1983) 1.8

LBP-83-71, 18 NRC 1105(1983) 1.8

(CALLAWAY PLANT, UNITS 1 AND 2),
ALAB-347, 4 NRC 216(1976) 3.7.3.4

ALAB-348, 4 NRC 225(1976) 3.7.3.3
5.6.4

ALAB-352, 4 NRC 371(1976) 6.20.4

LBP-78-31, 8 NRC 366(1978) 3.1.2.1
6.10

(CALVERT CLIFFS NUCLEAR POWER PLANT, UNITS 1 AND 2),
2AELR 11,57(1969) 6.20.3

(CARROL COUNTY SITE),
ALAB-601, 12 NRC 18(1980) 6.6.1

(CATAWBA NUCLEAR STATION UNITS 1 AND 2),
ALAB-355, 4 NRC 397(1976) 3.11.1.1.1
5.10.3
5.6.3
6.16.3

ALAB-359, 4 NRC 619(1976) 4.4.1
4.4.2
5.10.1

LBP-74-22, 7 AEC 659(1974) 3.10

LBP-74-5, 7 AEC 82(1974) 3.10

LBP-81-1, 13 NRC 27(1981) 2.9.3.1
2.9.3.2
2.9.3.6

(CATAWBA NUCLEAR STATION UNITS 1 AND 2),
2.9.4.2

(CATAWBA NUCLEAR STATION, UNITS 1 AND 2),
ALAB-687, 16 NRC 460(1982) 2.9.5.1
2.9.5.5
3.1.2.1.1
5.12.2.1
5.6.1
6.20.5

ALAB-687, 16 NRC 460(1982) 2.9.5.8

ALAB-768, 19 NRC 988(1984) 5.12.2

ALAB-794, 20 NRC 1630(1984) 5.7.1

CLI-83-19, 17 NRC 1041(1983) 2.9.1
2.9.3
2.9.5
2.9.5.1
2.9.5.5
3.1.2.1
3.4.1
3.7
5.6.1
6.20

CLI-83-19, 17 NRC(1983) 2.9.5.8

CLI-83-31, 18 NRC 1303(1983) 2.11.2.4

LBP-82-107A 16 NRC 1791(1982) 3.17
6.9.1

LBP-82-116, 16 NRC 1937(1982) 2.11.1
2.11.2
2.11.2.4
2.11.2.5
2.11.2.8
2.11.5
2.9.3.1
2.9.5
3.5.2.1

LBP-82-51, 16 NRC 167(1982) 2.9.5.9

LBP-83-29A, 17 NRC 1121(1983) 2.11.5.2

LBP-83-8A, 17 NRC 282(1983) 3.3.1

LBP-84-24, 19 NRC 1418(1984) 2.11.1
3.13.1

(CHEROKEE NUCLEAR STATION, UNITS 1, 2 AND 3),
ALAB-440, 6 NRC 642(1977) 2.9.2
2.9.3.3.3

ALAB-457, 7 NRC 70(1978) 6.14.1

ALAB-482, 7 NRC 979(1978) 5.1
5.5
6.18

(CLINCH RIVER BREEDER RE PLANT),
ALAB-345, 4 NRC 212(1977) 5.1
5.8.1

(CLINCH RIVER BREEDER REACTOR PLANT),
ALAB-326, 3 NRC 406(1976) 5.12.2.1

ALAB-330, 3 NRC 613(1976) 5.12.2.1

ALAB-354, 4 NRC 383(1976) 2.10.2
2.9.3.3.3
2.9.5.1
2.9.7.1
2.9.9.2.1
5.2

ALAB-688, 16 NRC 471(1982) 5.12.2
5.12.2.1
6.19.2

ALAB-721, 17 NRC 539(1983) 5.7
5.7.1

ALAB-755, 18 NRC 1337(1983) 1.9
6.19.2

ALAB-761, 19 NRC 487(1984) 3.1.1
3.1.2
6.19.2

CLI-76-13, 4 NRC 67(1976) 5.12.2.1
5.15
6.15.1

CLI-82-23, 16 NRC 412(1982) 3.17
6.1.4
6.15.8
6.19

CLI-82-8, 15 NRC 109(1982) 5.17

(CLINCH RIVER BREEDER REACTOR PLANT).

CLI-83-1, 17 NRC 1(1983) 6.19
LBP-83-8, 17 NRC 158(1983) 6.19.2
LBP-85-7, 21 NRC 507(1985) 1.9

(CLINTON POWER STATION, UNIT NO.1).

LBP-82-103, 16 NRC 1603(1982) 2.10.2
2.9.5.7
3.4
6.10
6.8

(CLINTON POWER STATION, UNIT 1).

LBP-81-61, 14 NRC 1735(1981) 2.11.2.1
2.11.4
2.9.3.1

(CLINTON POWER STATION, UNITS 1 AND 2).

ALAB-340, 4 NRC 27(1976) 2.11.1
2.11.2.2
2.11.2.3
3.11.1.3
3.13.1
5.10.3.1

LBP-81-15, 13 NRC 708(1981) 3.4.1

(COBALT-60 STORAGE FACILITY).

ALAB-682, 16 NRC 150(1982) 2.9.3.3.3
2.9.4.1.1
3.10
6.13

LBP-82-24, 15 NRC 652(1982) 2.9.3.3.3
2.9.4.1.2

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS AND 2).

LBP-82-17, 15 NRC 593(1982) 3.5.2
LBP-82-18, 15 NRC 598(1982) 2.11.1
LBP-82-87, 16 NRC 119(1982) 2.2
3.1.2
6.4.2

(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2).

ALAB-260, 1 NRC 51(1975)	5.6.3
ALAB-621, 12 NRC 578(1980)	3.15
ALAB-714, 17 NRC 86(1983)	2.11.2.4 5.6.1 5.7.1
ALAB-716, 17 NRC 341(1983)	5.7.1
CLI-81-24, 14 NRC 614(1981)	3.4.2
CLI-81-36, 14 NRC 1111(1981)	3.1.2.3 3.4.2
CLI-83-6, 17 NRC 333(1983)	5.7
LBP-81-23, 14 NRC 159(1981)	3.4.2
LBP-81-25, 14 NRC 241(1981)	2.11.2 2.11.2.8 2.9.5
LBP-81-51, 14 NRC 896(1981)	2.9.5.7
LBP-82-59, 16 NRC 533(1982)	2.11.2.4
LBP-83-33, 18 NRC 27(1983)	3.1.1
LBP-83-34, 18 NRC 36(1983)	3.17
LBP-83-75A, 18 NRC 1260(1983)	2.9.5 2.9.5.1 2.9.5.5
LBP-83-81, 18 NRC 1410(1983)	3.12.4 4.2
LBP-84-10, 19 NRC 509(1984)	3.12.4 4.2 4.3.1 5.12.1
LBP-84-25, 19 NRC 1589(1984)	3.5
LBP-84-50, 20 NRC 1464(1984)	2.11.2.4

(DAVIS-BESSE NUCLEAR POWER STATION).

ALAB-157, 6 AEC 858(1973)	5.8.8
ALAB-25, 4 AEC 633(1971)	5.7

(DAVIS-BESSE NUCLEAR POWER STATION),

ALAB-290, 2 NRC 401(1975) 6.11

ALAB-300, 2 NRC 752(1975) 5.12.2.1
5.4
6.11ALAB-332, 3 NRC 785(1976) 6.4.1.1
6.4.2
6.4.2.1
6.4.2.2
6.4.2.3

(DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1),

ALAB-297, 2 NRC 727(1975) 3.15
5.12.2.1

ALAB-314, 3 NRC 98(1976) 5.12.2.1

ALAB-323, 3 NRC 331(1976) 6.3

(DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3),

ALAB-385, 5 NRC 621(1977) 5.6.3
5.7
5.7.1
6.3

ALAB-560, 10 NRC 265(1979) 6.3

LBP-76-8, 3 NRC 199(1976) 2.11.2.2

LBP-77-7, 5 NRC 452(1977) 4.3
6.3

(DAVIS-BESSE NUCLEAR POWER STATION, UNITS 2 AND 3),

ALAB-622, 12 NRC 667(1980) 3.18.1
3.18.2

ALAB-652, 14 NRC 627(1981) 5.6.1

(DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3),

ALAB-378, 5 NRC 557(1977) 3.17
6.4.2.2

(DAVIS-BESSE STATION, UNITS 1, 2, 3); PERRY PLANT, UNITS 1 AND 2),

CLI-77-22, 6 NRC 451(1977)

(DAVIS-BESSE STATION, UNITS 1, 2, 3; PERRY PLANT, UNITS 1, 2),
ALAB-430, 6 NRC 457(1977) 4.4
5.10.3

(DIABLE CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2),
CLI-83-32, 18 NRC 1309(1983) 1.8
2.9.9
3.1.2.1.1
3.1.2.3
3.14.2
3.4.1
4.6
6.14.3
6.15.1
6.15.1.1
6.15.6
6.16.1
6.20.4

(DIABLO CANYON NUCLEAR POWER PLANT, UNIT 2),
ALAB-254, 8 AEC 1184(1975) 3.16
3.8.1
4.3
5.6.3

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2),
ALAB-223, 8 AEC 241(1974) 2.9.3.3.4

ALAB-334, 3 NRC 809(1976) 2.7
3.11.1.2
6.5.2

ALAB-410, 5 NRC 1398(1977) 2.11.2.4
3.12.4
6.20.4

ALAB-504, 8 NRC 406(1978) 3.16
5.12.2
5.12.2.1

ALAB-514, 8 NRC 697(1978) 5.12.2.1

ALAB-519, 9 NRC 42(1979) 2.11.5.1

ALAB-580, 11 NRC 227(1980) 3.1.2.1
3.14.3
3.3.7
4.6
5.6.3

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2).

ALAB-583, 11 NRC 447(1980)	2.10.2 5.2
ALAB-592, 11 NRC 744(1980)	5.6.6.1 6.4.1.1
ALAB-598, 11 NRC 876(1980)	4.4.2
ALAB-600, 12 NRC 3(1980)	2.10.2 2.11.2.5
ALAB-604, 12 NRC 149(1980)	3.12.1.2
ALAB-607, 12 NRC 165(1980)	3.12.3
ALAB-644, 13 NRC 903(1981)	3.1.4.2 3.16 5.1 5.15
ALAB-728, 17 NRC 777(1983)	1.8 2.9.9 3.1.2.1.1 3.1.2.3 3.14.2 3.4.1 4.6 6.14.3 6.15.1 6.15.1.1 6.15.6 6.16.1 6.20.4
ALAB-756, 18 NRC 1340(1983)	4.4.2
ALAB-763, 19 NRC 571(1984)	3.8
ALAB-775, 19 NRC 1361(1984)	3.14.2 4.4.1 4.4.1.1 4.4.2
ALAB-776, 19 NRC 1373(1984)	3.1.2
ALAB-781, 20 NRC 819(1984)	3.4 5.10.1 5.6.3 6.15.7
ALAB-782, 20 NRC 838(1984)	5.6.1 6.24
ALAB-811, 21 NRC 1622(1985)	3.16

(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2).

CLI-76-1, 3 NRC 73(1976)	5.4 5.8.11
CLI-80-11, 11 NRC 511(1980)	3.1.4.2 5.6.7
CLI-80-24, 11 NRC 775(1980)	2.9.5.9 6.23.3.2
CLI-80-6, 11 NRC 411(1980)	5.16.1
CLI-80-9, 11 NRC 436(1980)	3.1.4.1
CLI-81-6, 13 NRC 443(1981)	3.1.2.1 6.24.1
CLI-82-39, 16 NRC 1712(1982)	3.4.4 4.4.1
LBP-78-36, 8 NRC 567(1978)	3.12.4
LBP-81-5, 13 NRC 226(1981)	3.4.1 4.4 4.4.2 6.15.1.1

(DOUGLAS POINT NUCLEAR GENERATING STATION, UNITS 1 AND 2).

ALAB-218, 8 AEC 79(1974)	2.9.5.6 2.9.5.7 6.20.4 6.9.1
ALAB-277, 1 NRC 539(1975)	3.3.1 3.3.1.1 3.3.1.2 3.3.2.1 3.4.4

(DRESDEN NUCLEAR POWER STATION, UNIT 1).

CLI-81-25, 14 NRC 616(1981)	2.10.1.1 2.9.4.1.2 2.9.4.2 2.9.5.1 3.3.6 6.1.4 6.15.1
LBP-82-52, 16 NRC 183(1982)	2.9.4.1.1 2.9.4.1.2 2.9.5.1

(DUANE ARNOLD ENERGY CENTER),
ALAB-108, 6 AEC 195(1973) 2.10.1
2.10.1.2
3.4.2

(ENERGY SYSTEMS GROUP SPECIAL NUCLEAR MATERIALS LICENSE NO. SNM-21),
CLI-83-15, 17 NRC 1001(1983) 2.2
6.13

LBP-83-65, 18 NRC 774(1983) 2.2
2.9.4.1.1
6.13

(ENRICO FERMI ATOMIC POWER PLANT),
ALAB-77, 5 AEC 315(1972) 4.6

(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2),
LBP-79-1, 9 NRC 73(1979) 2.9.3.1
2.9.4.1.1
2.9.4.1.2
2.9.4.1.4
3.16

(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2),
ALAB-466, 7 NRC 457(1978) 5.6.1
5.8.14
6.24.3

ALAB-469, 7 NRC 470(1978) 5.9
6.14

ALAB-470, 7 NRC 473(1978) 2.9.4.1.1
2.9.4.1.2
2.9.4.1.4
2.9.4.2
2.9.5.3
3.1.2.5
6.16.1

ALAB-707, 16 NRC 1760(1982) 2.9.3.3.3
2.9.3.3.4
4.4.2
6.24

ALAB-709, 17 NRC 17(1983) 4.2.2
5.5.1
5.5.2

(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2),

5.9.1

ALAB-730, 17 NRC 1057(1983)

1.8
2.9.5.5
2.9.9
3.0

LBP-78-11, 7 NRC 381(1978)

2.9.4.1.1
2.9.4.1.2
2.9.4.1.4
2.9.4.2
2.9.5.3
3.1.2.1
3.1.2.5
6.1.4.4
6.15
6.15.6
6.16.1

LBP-78-13, 7 NRC 583(1978)

2.9.3.6
2.9.4.1.1
6.3
6.3.1

LBP-78-37, 8 NRC 575(1978)

1.7.1
2.11.1
2.11.2.1
2.9.4
2.9.4.1.2
2.9.5.6

LBP-82-96, 16 NRC 1408(1982)

2.9 3.3.3

(ERWIN, TENNESSEE),

CLI-80-27, 11 NRC 799(1980)

6.29.1

(EXPORT TO SOUTH KOREA),

CLI-80-30, 12 NRC 253(1980)

2.9.4.1.3
3.2.1
3.4.6

(EXPORTS TO TAIWAN),

CLI-81-2, 13 NRC 67(1981)

3.2.1
3.4.6
6.29.2.1

(EXPORTS TO THE PHILLIPINES),
CLI-80-14, 11 NRC 631(1980)

5.7.1
6.29.2.1
6.29.2.2

CLI-80-15, 11 NRC 672(1980)

6.15.1.1
6.29.2

(FINANCIAL ASSISTANCE TO PARTICIPANTS IN COMMISSION PROCEEDINGS),
CLI-76-23, 4 NRC 494(1976)

2.9.10.1

(FLOATING NUCLEAR POWER PLANTS),
ALAB-489, 8 NRC 194(1978)

1.8
3.1.2.5
3.3.1
6.15.7
6.16.1
6.16.1.1
6.18
6.20.4

ALAB-500, 8 NRC 323(1978)

5.14

LBP-79-15, 9 NRC 653(1979)

6.15.2

(FORT CALHOUN STATION, UNIT 2),
LBP-77-5, 5 NRC 437(1977)

1.1

(FULTON ENGINEERING STATION, UNITS 1 AND 2),
ALAB-206, 7 AEC 841(1974)

2.9.7

(FULTON GENERATING STATION, UNITS 1 AND 2),
ALAB-657, 14 NRC 967(1981)

1.3
1.9
3.1.2.1.1
3.4.3

LBP-79-23, 10 NRC 220(1979)

3.1.2.5
6.24
6.6

LBP-84-43, 20 NRC 1333(1984)

1.9

(GE MORRIS OPERATION SPENT FUEL STORAGE FACILITY),
LBP-82-14, 15 NRC 530(1982) 3.5.2

(GETR VALLECITOS),
LBP-83-19, 17 NRC 573(1983) 2.5
2.9.3
2.9.4
2.9.5

LBP-84-54, 20 NRC 1637(1984) 2.9.3.3.3
3.6

LBP-85-4, 21 NRC 399(1985) 3.17
3.5

(GRAND GULF NUCLEAR STATION, UNIT 1),
CLI-84-19, 20 NRC 1055(1984) 6.1

LBP-84-19, 19 NRC 1076(1984) 6.1.4

LBP-84-23, 19 NRC 1412(1984) 6.1.4

LBP-84-39, 20 NRC 1031(1984) 6.1.4

(GRAND GULF NUCLEAR STATION, UNITS 1 AND 2),
ALAB-130, 6 AEC 423(1973) 2.6.3.3
2.9.3
2.9.5.1
2.9.5.3
3.5

ALAB-140, 6 AEC 575(1973) 2.9.7
5.10.1

ALAB-195, 7 AEC 455(1974) 5.13.1.1
5.4

ALAB-704, 16 NRC 1725(1982) 2.9.3.3.3
2.9.3.3.4
6.20.2
6.20.4

LBP-73-41, 6 AEC 1057(1973) 2.9.3.5
2.9.8

LBP-82-92, 16 NRC 1376(1982) 2.9.3.3
3.1.2.1
6.20.4

(GREENE COUNTY NUCLEAR PLANT),	
ALAB-434, 6 NRC 471(1977)	2.9.7
ALAB-439, 6 NRC 640(1977)	5.12.2.1
(GREENWOOD ENERGY CENTER, UNITS 2 AND 3),	
ALAB-225, 8 AEC 379(1974)	2.8.1.1
	3.1.4.1
ALAB-247, 8 AEC 936(1974)	6.15
	6.15.8.2
ALAB-376, 5 NRC 426(1977)	2.9.4.1.1
	2.9.7
	3.1.2.4
	5.4
	5.8.1
ALAB-472, 7 NRC 570(1978)	2.9.7
	5.4
	5.8.1
ALAB-476, 7 NRC 759(1978)	2.9.3.3.3
(H. B. ROBINSON, UNIT 2)),	
ALAB-569, 10 NRC 557(1979)	6.15.6.1
	6.15.8.5
LBP-78-22, 7 NRC 1052(1978)	6.15.8.4
(HANFORD NO. 2 NUCLEAR POWER PLANT),	
ALAB-113, 6 AEC 251(1973)	3.10
(HARTSVILLE NUCLEAR PLANT UNITS 1A, 2A, 1B, 2B),	
ALAB-367, 5 NRC 92(1977)	3.11
	3.11.1.1.1
	3.13.1
	5.10.1
	5.10.3
	5.6.3
ALAB-380, 5 NRC 572(1977)	3.1.2.3
	6.15.8.1
	6.19.2
	6.9.1
ALAB-409, 5 NRC 1391(1977)	5.13.4

(HARTSVILLE NUCLEAR PLANT UNITS 1A,2A,1B,2B).

ALAB-418, 6 NRC 1(1977) 4.5
5.12.1

ALAB-463, 7 NRC 341(1978) 3.1.2.7
3.11.4
3.13.1
3.14.3
3.16
3.7.2
4.3
4.4
5.5.1
6.7.1
6.7.2

ALAB-467, 7 NRC 459(1978) 4.5
5.1
5.4
5.5
5.6.1
5.8.15

ALAB-554, 10 NRC 15(1979) 3.5

(HOPE CREEK GENERATING STATION, UNIT 1).

ALAB-759, 19 NRC 13(1984) 3.1.4.1
3.1.4.2
3.17

(HOPE CREEK GENERATING STATION, UNITS 1 AND 2).

ALAB-251, 8 AEC 993(1974) 5.2

ALAB-394, 5 NRC 769(1977) 5.10.3

LBP-77-9, 5 NRC 474(1977) 2.9.3.3.3

LBP-78-15, 7 NRC 642(1978) 3.12

(HOPE CREEK GENERATING STATION, UNITS 1 AND 2).

ALAB-460, 7 NRC 204(1978) 4.3

ALAB-518, 9 NRC 14(1979) 4.3
6.15.1.2
6.16.4

(INDIAN POINT NUCLEAR STATION, UNITS 1, 2 AND 3).

ALAB-304, 3 NRC 1(1976) 2.9.4.1.4

(INDIAN POINT NUCLEAR STATION, UNITS 1, 2 AND 3),
5.2
6.16.1

(INDIAN POINT STATION, UNIT NO. 2),
LBP-82-1, 15 NRC 37(1982) 1.7.1
2.9.3.3.3

(INDIAN POINT STATION, UNIT 2),
ALAB-159, 6 AEC 1001(1973) 5.10.3
ALAB-188, 7 AEC 323(1974) 6.16.2
ALAB-209, 7 AEC 971(1974) 6.16.3
ALAB-243, 8 AEC 850(1974) 2.9.1
ALAB-369, 5 NRC 129(1977) 5.2
ALAB-399, 5 NRC 1156(1977) 6.15.8.1
ALAB-414, 5 NRC 1425(1977) 5.15
5.7
ALAB-453, 7 NRC 31(1978) 6.15.8.1
ALAB-75, 5 AEC 309(1972) 3.10
CLI-74-23, 7 AEC 947(1974) 2.9.5.9
5.16.1.3
6.16.2

(INDIAN POINT STATION, UNIT 3),
ALAB-281, 2 NRC 6(1975) 5.12.1
5.13.1.2
5.4

(INDIAN POINT STATION, UNIT 3), UNIT 3),
CLI-74-28, 8 AEC 7(1974) 3.4.2
CLI-75-14, 2 NRC 835(1975) 3.9
6.15.8.1

(INDIAN POINT STATION, UNITS 1, 2 AND 3),
ALAB-357, 4 NRC 542(1976) 6.1.5

(INDIAN POINT STATION, UNITS 1, 2 AND 3),
CLI-75-8, 2 NRC 173(1975) 6.24.1
6.24.3

CLI-77-2, 5 NRC 13(1977) 3.7
6.5.4.1

CLI-77-4, 5 NRC 31(1977) 6.1.5

(INDIAN POINT STATION, UNITS 1, 2, AND 3),
ALAB-319, 3 NRC 188(1976) 3.1.2.3
3.4.2
6.16.1.3

ALAB-377, 5 NRC 430(1977) 2.6
3.3.3

(INDIAN POINT UNIT NO. 2); (INDIAN POINT UNIT NO. 3),
LBP-82-12A, 15 NRC 515(1982) 3.1.2.4
LBP-82-12B, 15 NRC 523(1982) 3.1.2.4
LBP-82-25, 15 NRC 715(1982) 2.10.2
2.9.4.1.2

(INDIAN POINT UNIT 2); (INDIAN POINT UNIT 3),
LBP-83-5, 17 NRC 134(1983) 2.9.5

(INDIAN POINT, UNIT NO. 2); (INDIAN POINT, UNIT NO. 3),
LBP-82-23, 15 NRC 647(1982) 3.1.2.1
5.14

(INDIAN POINT, UNIT NO.2); (INDIAN POINT, UNIT NO.3),
LBP-82-105, 16 NRC 1629(1982) 2.9.5
3.4
6.20.3

LBP-82-113, 16 NRC 1907(1982) 2.11.3

(INDIAN POINT, UNIT 2); (INDIAN POINT, UNIT 3),
CLI-81-1, 13 NRC 1(1981) 3.1.2.7
5.16.1

CLI-81-23, 14 NRC 610(1981) 3.1.2.7

(INDIAN POINT, UNIT 2); (INDIAN POINT, UNIT 3),
5.16.1

CLI-82-41, 16 NRC 1721(1982) 1.8
6.5.3.1

CLI-83-16, 17 NRC 1006(1983) 1.8
6.10.1
6.24

LBP-83-29, 17 NRC 1117(1983) 3.13

(INDIAN POINT, UNIT 2), (INDIAN POINT, UNIT 3),
CLI-82-15, 16 NRC 27(1982) 2.9.3
3.1.2.7

(JAMESPORT NUCLEAR POWER STATION, UNITS 1 AND 2),
ALAB-318, 3 NRC 186(1976) 5.12.2.1

(JAMESPORT NUCLEAR STATION, UNITS 1 AND 2),
ALAB-292, 2 NRC 631(1975) 2.5.3
2.9.3.3.2
2.9.4.1.1
2.9.4.1.4

ALAB-353, 4 NRC 381(1976) 5.12.2.1

ALAB-481, 7 NRC 807(1978) 5.7.1

LBP-77-21, 5 NRC 684(1977) 6.15.3
6.15.3.1

2CCH NRR 30(1976) 3.6

(JOSEPH M. FARLEY NUCLEAR PLANT, UNITS 1 AND 2),
CLI-74-12, 7 AEC 203(1974) 3.17
5.6.2

CLI-81-27, 14 NRC 795(1981) 5.7.1

LBP-77-24, 5 NRC 804(1977) 6.3

(JOSEPH M. FARLEY PLANT, UNITS 1 AND 2),
ALAB-182, 7 AEC 210(1974) 2.9.5.3
3.17
3.4.1

(JOSEPH M. FARLEY PLANT, UNITS 1 AND 2),
3.5
3.5.3

(KEWAUNEE NUCLEAR PLANT)),
LBP-78-24, 8 NRC 78(1978) 2.9.3.1
2.9.3.3.3

(KOSHKONONG NUCLEAR PLANT, UNITS 1 AND 2),
CLI-74-45, 8 AEC 928(1974) 2.11.1

(KOSHKONONG NUCLEAR POWER PLANT, UNITS 1 AND 2),
CLI-75-2, 1 NRC 39(1975) 3.3.2.2

(LA CROSSE BOILING WATER REACTOR)),
DOC. NO. 50, UNPUBL. DEC(1980) 2.9.10.1

LBP-80-26, 12 NRC 367(1980) 2.2
6.24.7
6.24.8

(LA CROSSE BOILING WATER REACTOR),
ALAB-497, 8 NRC 312(1978) 3.1.4.1
ALAB-614, 12 NRC 347(1980) 3.1.4.2
LBP-81-7, 13 NRC 257(1981) 6.24.5
LBP-82-58, 16 NRC 512(1982) 3.5
3.5.1
3.5.2
3.5.3
6.15.4
6.15.5
6.15.6
6.15.7

(LA CROSSE BOILING WATER REACTOR), N/A),
LBP-81-31, 14 NRC 375(1981) 3.3.6

(LASALLE COUNTY NUCLEAR STATION, UNITS 1 AND 2),
ALAB-153, 6 AEC 821(1973) 4.4

(LASALLE COUNTY NUCLEAR STATION, UNITS 1 AND 2),
4.4.2CLI-73-8, 6 AEC 169(1973) 2.8.1.1
3.1.4.1

(LIMERICK GENERATING STATION, UNITS 1 AND 2),

ALAB-262, 1 NRC 163(1975) 2.9.9.1
6.15.3
6.20.4ALAB-726, 17 NRC 755(1983) 3.1.2.1
5.6.1ALAB-765, 19 NRC 645(1984) 2.2
2.9.5.5
3.1.2.1
3.4.1
6.13
6.5.4.1ALAB-778, 20 NRC 42(1984) 5.5.1
5.8.11
6.13
6.16.1ALAB-785, 20 NRC 848(1984) 3.1.2.1.1
6.15.1
6.16.1
6.5.1
6.5.4.1ALAB-789, 20 NRC 1443(1984) 2.9.4.1.1
5.7.1
6.26ALAB-804, 21 NRC 587(1985) 2.9.5
2.9.5.1
3.1.2.1.1ALAB-806, 21 NRC 1183(1985) 2.9.5.1
2.9.5.13
2.9.5.5
2.9.5.8ALAB-808, 21 NRC 1595(1985) 2.9.9.2.2
3.11.1.1
5.7.1
6.16.1.3LBP-82-43A, 15 NRC 142(1982) 2.9.3
2.9.4.1.1
2.9.4.1.2
2.9.4.2

(LIMERICK GENERATING STATION, UNITS 1 AND 2).

	3.4.1
	6.15
	6.15.1
LBP-82-72, 16 NRC 968(1982)	6.14
	6.15.8
	6.15.8.4
LBP-83-11, 17 NRC 413(1983)	6.15.6
	6.15.8
	6.15.8.5
LBP-83-25, 17 NRC 681(1983)	3.1.2.1
	5.6.1
	5.8.10
LBP-83-39, 18 NRC 67(1983)	1.8
	2.5.5.5
	2.9.5.8
	3.0
	3.4
LBP-84-16, 19 NRC 857(1984)	3.1.2.1
	3.4.1
	6.13
LBP-84-18, 19 NRC 1020(1984)	2.9.5.8
LBP 84-31, 20 NRC 446(1984)	6.15.3

(LOW ENRICHED URANIUM EXPORTS TO EURATOM MEMBER NATIONS).

CLI-77-31, 6 NRC 849(1977)	2.9.10.1
----------------------------	----------

(MAINE YANKEE ATOMIC POWER STATION).

ALAB-144, 6 AEC 628(1973)	5.10.2.1
ALAB-161, 6 AEC 1003(1973)	3.7.2
	5.5.1
ALAB-166, 6 AEC 1148(1973)	3.7.2
	5.12.1
ALAB-175, 7 AEC 62(1974)	3.7.2
CLI-74-2, 7 AEC 2(1974)	3.7.2
	3.9
CLI-83-21, 18 NRC 157(1983)	6.10.1
LBP-82-4, 15 NRC 199(1982)	2.9.3.1
	2.9.3.3.3

(MANUFACTURING LICENSE FOR FLOATING NUCLEAR POWER PLANTS).

ALAB-686, 16 NRC 454(1982)	4.3
ALAB-689, 16 NRC 887(1982)	4.6
CLI-82-37, 16 NRC 1691(1982)	4.3
LBP-75-67, 2 NRC 813(1975)	2.11.5.2 2.9.2 3.3.2.1 3.3.2.4

(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2).

ALAB-316, 3 NRC 167(1976)	2.5.1 3.1.2.1 3.4
ALAB-322, 3 NRC 328(1976)	2.9.4 2.9.4.1.2
ALAB-339, 4 NRC 20(1976)	2.9.3.3.2 2.9.7.1 5.12.2 5.5.3 5.8.4.1
ALAB-371, 5 NRC 409(1977)	3.3.1 5.12.2.1
ALAB-374, 5 NRC 417(1977)	4.6 5.12.2.1.2
ALAB-393, 5 NRC 767(1977)	5.12.2.1
ALAB-405, 5 NRC 1190(1977)	3.15 5.12.2.1
ALAB-437, 6 NRC 630(1977)	5.7.1
ALAB-459, 7 NRC 179(1978)	1.1 3.11.1.4 3.3.2.4 3.3.4 5.13 5.6.1 6.15.3
ALAB-461, 7 NRC 313(1978)	3.1.2.5 3.1.2.7 3.13.1 5.10.1 5.4 5.5

(MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2),

5.8.7
6.16.1.3

ALAB-493, 8 NRC 253(1978)

2.7
3.1.2.6
3.6
4.5
5.12.1
5.15.1
5.18
5.19.4
5.7.1
6.18
6.5.1
6.5.2

ALAB-530, 9 NRC 261(1979)

4.4

CLI-80-10, 11 NRC 438(1980)

2.9.3.1
2.9.4.1.1
2.9.4.2
6.24
6.24.1.3

(MIDLAND PLANT UNITS 1 AND 2),

ALAB-691, 16 NRC 897(1982)

1.5.2
3.1.2
3.7.1
4.2
4.2.2
4.6
5.1
5.5.1
6.4.1
6.4.1.1

(MIDLAND PLANT, UNITS 1 AND 2),

ALAB-101, 6 AEC 60(1973)

2.8.1
2.8.1.1
2.8.1.3
3.1.4.1

ALAB-115, 6 AEC 257(1973)

5.10.2.2

ALAB-118, 6 AEC 263(1973)

2.11.5

ALAB-122, 6 AEC 322(1973)

2.11.5
2.11.6
5.4
5.8.3.1

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-123, 6 AEC 331(1973)	3.1.1 3.10 3.7.2 5.5.1 5.5.2
ALAB-235, 8 AEC 645(1974)	4.3.1 6.14.2.1
ALAB-270, 1 NRC 473(1975)	5.10.1 5.10.3 5.13.2
ALAB-282, 2 NRC 9(1975)	5.2
ALAB-283, 2 NRC 11(1975)	6.24.5
ALAB-315, 3 NRC 101(1976)	6.24.5
ALAB-344, 4 NRC 207(1976)	5.8.2
ALAB-379, 5 NRC 565(1977)	3.12 3.12.2
ALAB-382, 5 NRC 603(1977)	2.9.10.2 3.12.3
ALAB-395, 5 NRC 772(1977)	5.15.2 5.8 5.19.3 5.6.2 5.7 5.7.1 6.15.3.2
ALAB-417, 5 NRC 1442(1977)	5.4 6.14.3 6.4.1.1
ALAB-438, 6 NRC 638(1977)	2.11.6 5.12.2.1
ALAB-458, 7 NRC 155(1978)	4.3 5.15.3 5.7.1 5.7.2 6.15.4.2
ALAB-468, 7 NRC 464(1978)	3.3.4 5.8.2
ALAB-541, 9 NRC 436(1979)	5.12.2.1 5.8.2
ALAB-634, 13 NRC 96(1981)	5.12.2.1

(MIDLAND PLANT, UNITS 1 AND 2), ALAB-674, 15 NRC 110(1982)	3.1.2.1 3.1.2.1.1
ALAB-684, 16 NRC 162(1982)	3.1.2.5 5.4
ALAB-764, 19 NRC 633(1984)	2.11.2 2.11.2.4 2.11.2.5 2.11.6
CLI-74-3, 7 AEC 7(1974)	6.24.4
CLI-79-3, 9 NRC 107(1979)	6.4.2.2
CLI-83-2, 17 NRC 69(1983)	1.5.2
LBP-74-54, 8 AEC 112(1974)	3.7
LBP-78-27, 8 NRC 275(1978)	2.6.3.3 2.9.3.1 2.9.4 2.9.7 5.8.1
LBP-81-63, 14 NRC 1768(1981)	2.11.2.6 3.12 6.5.4.1
LBP-82-118, 16 NRC 2034(1982)	6.21
LBP-82-63, 16 NRC 571(1982)	2.9.3.1 2.9.3.3.3 2.9.5.5 6.15.6 6.21 6.8
LBP-82-95, 16 NRC 1401(1982)	6.15.6
LBP-83-28, 17 NRC 987(1983)	2.9.9 2.9.9.2.2 3.13
LBP-83-53, 18 NRC 282(1983)	2.11.2 2.11.2.4
LBP-83-64, 18 NRC 766(1983)	2.11.2 2.11.2.4
LBP-83-70, 18 NRC 1094(1983)	2.11.2.4
LBP-84-20, 19 NRC 1285(1984)	1.5.2 2.9.5.4 2.9.5.5

(MIDLAND PLANT, UNITS 1 AND 2),

3.7.3.7
4.4.2

LBP-85-2, 21 NRC 24(1985)

2.9.9.3
2.9.9.4

(MONTAGUE NUCLEAR POWER STATION, UNITS 1 AND 2),

LBP-75-19, 1 NRC 436(1975)

1.8
6.5.3.1

(MONTICELLO PLANT, UNIT 1),

ALAB-16, 4 AEC 435(1970)

2.11.2.4
6.23.3.1

ALAB-611, 12 NRC 301(1980)

4.6

ALAB-620, 12 NRC 574(1980)

3.4.3

4 AEC 440(1970)

2.11.2.4
6.23.3.1

(NEP UNITS 1 AND 2),

LBP-78-18, 7 NRC 932(1978)

2.9.3.3.3

LBP-78-9, 7 NRC 271(1978)

1.5.1
1.8
3.1.2.5
6.16.1

(NINE MILE POINT NUCLEAR STATION, UNIT 2),

ALAB-264, 1 NRC 347(1975)

3.16
3.7.3.2
4.4.2
5.2
5.6.3
6.15.3

LBP-74-26, 7 AEC 758(1974)

3.10

LBP-83-45, 18 NRC 213(1983)

2.10.2
2.9.4.1
2.9.4.1.1

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2),

ALAB-146, 6 AEC 631(1978)

2.9.3.2

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2),
2.9.4.1.4

ALAB-256, 1 NRC 10(1975) 2.9.1
3.16
3.7
3.8
4.3

ALAB-289, 2 NRC 395(1975) 2.9.3.3.3

ALAB-324, 3 NRC 347(1976) 1.5.2

ALAB-342, 4 NRC 98(1976) 2.9.3.3.3
2.9.3.3.4
2.9.4
2.9.4.1.1
2.9.7.1
5.5.3

ALAB-491, 8 NRC 245(1978) 5.5.1
5.6.1
6.9.2.2

ALAB-522, 9 NRC 54(1979) 2.9.4.1.1
2.9.7.1

ALAB-551, 9 NRC 704(1979) 4.6
5.19.1
5.5.1
5.6.1
6.5.4.1

ALAB-555, 10 NRC 23(1979) 3.12.4
3.16

ALAB-568, 10 NRC 554(1979) 5.10.2

ALAB-578, 11 NRC 189(1980) 4.6
5.15

ALAB-584, 11 NRC 451(1980) 3.1.1
3.3.2.4
3.5.2.3
3.5.4
3.5.5
5.5
5.8.2
6.15.4

CLI-74-16, 7 AEC 313(1974) 2.11.3
2.11.5

CLI-76-22, 4 NRC 480(1976) 1.5.2
6.5.4.1

(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2),
UNPUBL. DEC(1976) 2.9.2

(NORTH ANNA POWER STATION, UNITS 1 AND 2),
ALAB-741, 18 NRC 371(1983) 5.12.2
5.12.2.1

ALAB-790, 20 NRC 1450(1984) 5.1
6.15.1.1

LBP-84-40A, 20 NRC 1195(1984) 2.9.5.3

(NORTH COAST NUCLEAR PLANT, UNIT 1),
ALAB-286, 2 NRC 213(1975) 2.9.7
5.8.1

ALAB-313, 3 NRC 94(1976) 2.7
6.5.2

ALAB-605, 12 NRC 153(1980) 1.10

ALAB-662, 14 NRC 1125(1981) 1.3
1.9

LBP-80-15, 11 NRC 765(1980) 2.9.10.1
3.1.2.2
3.5.1.1

(NUCLEAR FUEL RECOVERY AND RECYCLING CENTER),
ALAB-447, 6 NRC 873(1977) 2.10.2

(OCONEE NUCLEAR STATION AND MCGUIRE NUCLEAR STATION)),
ALAB-528, 9 NRC 146,(1979) 2.9.3.3.3
2.9.4.1.2
2.9.4.2
2.9.6

(PALISADES NUCLEAR PLANT),
ALJ-80-1, 12 NRC 117(1980) 2.11.2.4
2.11.3
6.23.1

LBP-79-20, 10 NRC 108(1979) 2.9.4.1.1
2.9.4.1.2
2.9.4.1.4
2.9.5.1

(PALISADES NUCLEAR PLANT),

6.15.1.1

(PALISADES NUCLEAR POWER FACILITY),

LBP-82-101, 16 NRC 1594(1982) 2.9.9.5

(PALO VERDE NUCLEAR GENERATING STATION, UNIT 1, 2 AND 3),

LBP-82-45, 15 NRC 152(1982) 6.15.8

(PALO VERDE NUCLEAR GENERATING STATION, UNITS 1, 2 AND 3),

ALAB-336, 4 NRC 3(1976) 4.3

ALAB-713, 17 NRC 83(1983) 2.9.7
5.6.6

LBP-82-117A, 16 NRC 1964(1982) 3.1.2.1
3.1.2.6
6.15
6.15.1.2
6.15.6

LBP-82-117B, 16 NRC 2024(1982) 2.9.3
2.9.3.3.3
4.4.2

LBP-82-62, 16 NRC 565(1982) 5.12.2.1

(PALO VERDE NUCLEAR GENERATING STATION, UNITS 2 AND 3),

ALAB-742, 18 NRC 380(1983) 5.12.2
5.12.2.1

LBP-83-36, 18 NRC 45(1983) 1.8
3.1.2.1
3.1.2.5
6.15.1.1
6.15.3
6.16.1

(PEACH BOTTOM ATOMIC POWER STATION, UNIT 3),

ALAB-532, 9 NRC 279(1979) 4.1
6.15.8.5

(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3),

ALAB-158, 6 AEC 999(1973) 5.7.1

(PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3),

ALAB-165, 6 AEC 1145(1973)	5.11.2
ALAB-216, 8 AEC 13(1974)	2.9.5.1 6.16.2
ALAB-221, 8 AEC 95(1974)	5.7.1
ALAB-389, 5 NRC 727(1977)	3.1.2.1.1 5.19.1
ALAB-540, 9 NRC 428(1979)	5.5.4
ALAB-546, 9 NRC 636(1979)	5.5.4
ALAB-562, 10 NRC 437(1979)	6.15.1.2 6.15.8.1
ALAB-566, 10 NRC 527(1979)	3.3.5.2 3.7.1 6.9.1
CLI-73-10, 6 AEC 173(1973)	2.9.3.1 2.9.4.1.4
CLI-74-32, 8 AEC 217(1974)	2.10.2

(PEACH BOTTOM UNITS 2,3; ISLAND UNIT 2; HOPE CREEK UNITS 1,2),

ALAB-640, 13 NRC 487(1981)	3.17
----------------------------	------

(PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2),

ALAB-273, 1 NRC 492(1975)	2.9.7 5.8.1
ALAB-333, 3 NRC 804(1976)	2.9.4 2.9.4.1.1
CLI-76-26, 4 NRC 608(1976)	3.3.6
CLI-76-27, 4 NRC 610(1976)	2.9.4 2.9.4.1.1 2.9.4.2

(PERKINS NUCLEAR STATION UNITS 1, 2, 3),

ALAB-302, 2 NRC 856(1975)	2.9.7 5.8.1
ALAB-431, 6 NRC 460(1977)	2.9.3.3.3
ALAB-433, 6 NRC 469(1977)	5.12.2

(PERKINS NUCLEAR STATION UNITS 1, 2, 3),
5.2

ALAB-591, 11 NRC 741(1980) 3.1.2.1

ALAB-597, 11 NRC 870(1980) 5.6.5
5.8.10

(PERKINS NUCLEAR STATION, UNITS 1, 2 AND 3),
ALAB-668, 15 NRC 450(1982) 1.9

LBP-82-81, 16 NRC 112(1982) 1.9

(PERRY NUCLEAR PLANT, UNITS 1 AND 2),
LBP-81-35, 14 NRC 682(1981) 2.11.4
2.9.3.3.3
2.9.5.3
2.9.9.2.2
3.7.3.2

LBP-81-42, 14 NRC 842(1981) 2.9.5.7

LBP-81-57, 14 NRC 1037(1981) 6.21.2

(PERRY NUCLEAR POWER PLANT),
LBP-82-69, 16 NRC 751(1982) 3.1.2.1

(PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2),
ALAB-294, 2 NRC 663(1975) 5.2

ALAB-298, 2 NRC 730(1975) 3.1.2.5

ALAB-443, 6 NRC 741(1977) 3.1.2.1
3.1.2.6
3.14.2
3.5.2.3
3.5.3
5.6.4

ALAB-675, 15 NRC 110(1982) 5.12.2.1

ALAB-706, 16 NRC 1754(1982) 2.9.5
5.12.2.1

ALAB-736, 18 NRC 165(1983) 3.15
3.5.5

ALAB-802, 21 NRC 490(1985) 2.9.2

(PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2).

3.1.2.7
3.11.1.1.1
5.10.3
6.16.1.2

LBP-81-24, 14 NRC 175(1981) 2.9.4.1.1
3.17
3.4.1

LBP-82-1A, 15 NRC 43(1982) 2.9.5.7
6.9.1

LBP-82-102, 16 NRC 1597(1982) 2.11.2.2

LBP-82-11, 15 NRC 348(1982) 2.9.5.5
2.9.5.7

LBP-82-114, 16 NRC 1909(1982) 3.1.2.5
3.5

LBP-82-15, 15 NRC 555(1982) 2.9.5.5
2.9.5.7

LBP-82-53, 16 NRC 196(1982) 2.9.3.3.3
5.18

LBP-82-67, 16 NRC 734(1982) 2.11.2.2
2.11.2.8

LBP-82-79, 16 NRC 111(1982) 2.9.5.5
3.1.2.3

LBP-82-89, 16 NRC 1355(1982) 2.9.5.5

LBP-82-9, 15 NRC 339(1982) 3.1.2.3

LBP-82-90, 16 NRC 1359(1982) 2.9.5.5

LBP-82-98, 16 NRC 1459(1982) 2.9.5

LBP-83-18, 17 NRC 501(1983) 6.17.1

LBP-83-3, 17 NRC 59(1983) 3.5.2.3
3.5.3

LBP-83-38, 18 NRC 61(1983) 6.13
6.15.1.1

LBP-83-46, 18 NRC 218(1983) 3.5.3

LBP-83-52, 18 NRC 256(1983) 3.1.2

LBP-83-77, 18 NRC 1365(1983) 5.4

LBP-83-79, 18 NRC 1400(1983) 2.11.1

(PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2),
LBP-83-80, 18 NRC 1404(1983) 2.9.3.3.3
2.9.5.5

LBP-84-28, 20 NRC 129(1984) 2.9.5.1

LBP-84-3, 19 NRC 282(1984) 3.14.2
4.4.1

(PERRY NUCLEAR POWER PLANTS, UNITS 1 AND 2),
ALAB-805, 21 NRC 596(1985) 5.12.2
5.12.2.1

(PHIPPS BEND NUCLEAR PLANT, UNITS 1 AND 2),
ALAB-506, 8 NRC 533(1978) 6.15

ALAB-752, 18 NRC 1318(1983) 6.5.4.1

LBP-77-14, 5 NRC 494(1977) 6.15

LBP-77-60, 6 NRC 647(1977) 6.15.4.2

(PILGRIM NUCLEAR POWER STATION),
ALAB-81, 5 AEC 348(1972) 5.7.1

CLI-82-16, 16 NRC 44(1982) 2.9.3.1
6.24.1.3

(PILGRIM NUCLEAR STATION),
ALAB-74, 5 AEC 308(1972) 5.10.2.1

ALAB-83, 5 AEC 354(1972) 3.1.1
3.11.1.1
3.16
4.2

(PILGRIM NUCLEAR STATION, UNIT 1),
ALAB-191, 7 AEC 417(1974) 3.5.1.2
6.1.4.3

ALAB-231, 8 AEC 633(1974) 4.6
5.8.6

(PILGRIM NUCLEAR STATION, UNIT 2),
ALAB-238, 8 AEC 656(1974) 2.9.3.3.3

ALAB-632, 13 NRC 91(1981) 4.3

LBP-74-63, 8 AEC 330(1974) 2.9.3.3.3

LBP-76-7, 3 NRC 156(1976) 2.9.9.5
3.6

(PILGRIM NUCLEAR STATION, UNIT 2), UNIT 2),
ALAB-269, 1 NRC 411(1975) 2.9.7
5.4
5.8.1

ALAB-479, 7 NRC 774(1978) 3.7
6.16.1

(POINT BEACH NUCLEAR PLANT),
ALAB-73, 5 AEC 297(1972) 4.6

(POINT BEACH NUCLEAR PLANT, UNIT 1),
ALAB-696, 16 NRC 1245(1982) 2.11.1
3.1.2.4
3.1.2.7
3.3.2.4
3.3.4
3.5
3.5.2.1
4.6
5.13.2
5.4

ALAB-719, 17 NRC 387(1983) 3.3.1
3.6

CLI-80-38, 12 NRC 547(1980) 2.9.4.1.1

LBP-80-29, 12 NRC 581(1980) 5.14

LBP-82-108, 16 NRC 1811(1982) 2.9.5
2.9.9.5
3.6

(POINT BEACH NUCLEAR PLANT, UNIT 2),
ALAB-137, 6 AEC 491(1973) 3.7.2
6.23.3.1

(POINT BEACH NUCLEAR PLANT, UNIT 2),
ALAB-78, 5 AEC 319(1972) 3.1.1
3.16
4.2
5.6.1
5.6.3
6.20.4

ALAB-82, 5 AEC 350(1972) 6.15.8.1
6.15.8.2

(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2),
ALAB-666, 15 NRC 277(1982) 5.11
5.11.1
5.11.2

ALAB-739, 18 NRC 335(1983) 3.1.2.1
5.10.3
5.6.1

LBP-78-23, 8 NRC 71(1978) 2.6
2.9.3
2.9.3.1
3.1.2.2

LBP-81-39, 14 NRC 819(1981) 3.1.2.4

LBP-81-44, 14 NRC 850(1981) 3.1.2.4

LBP-81-45, 14 NRC 853(1981) 3.1.2.4
3.4.1

LBP-81-46, 14 NRC 862(1981) 3.1.2.4

LBP-81-55, 14 NRC 1017(1981) 3.3.7
3.4.1
3.5.3
6.23.3.1

LBP-81-62, 14 NRC 1747(1981) 6.23

LBP-82-10, 15 NRC 341(1982) 2.11.5.2
3.7.2

LBP-82-12, 15 NRC 354(1982) 3.1.1
3.1.2.3

LBP-82-19A, 15 NRC 623(1982) 3.1.2.4

LBP-82-2, 15 NRC 48(1982) 3.1.2.7
6.23

LBP-82-24A, 15 NRC 661(1982) 3.1.2.3

(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2),
LBP-82-33, 15 NRC 887(1982) 6.23

LBP-82-42, 15 NRC 130(1982) 6.23.3.1

LBP-82-5A, 15 NRC 216(1982) 3.1.1
3.1.2.3
3.1.2.4
6.23.3
6.4.1.1

LBP-82-6, 15 NRC 281(1982) 3.1.1
3.1.2.3
4.5

LBP-82-88, 16 NRC 1335(1982) 3.7.2

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2)),
ALAB-104, 6 AEC 179(1973) 2.9.3
4.3

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2),
ALAB-107, 6 AEC 188(1973) 2.11.1
2.9.3.1
2.9.4.1.4
2.9.5.11
2.9.7.1
5.6.3

ALAB-110, 6 AEC 247(1973) 2.11.1
2.9.4.1.4
2.9.5.11

ALAB-244, 8 AEC 857(1974) 2.9.11
2.9.9.2.1
2.9.9.3
2.9.9.4
3.11.3
3.13.1
4.2.1
4.2.2
5.13.3
5.5
5.5.2

ALAB-252, 8 AEC 1175(1974) 2.9.9.2.1
3.13.1
5.1
5.5

ALAB-284, 2 NRC 197(1975) 3.14.1

(PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2),
ALAB-288, 2 NRC 390(1975) 3.6

ALAB-419, 6 NRC 3(1977) 3.15
3.4
5.12.2.1.1

ALAB-455, 7 NRC 41(1978) 3.16
5.6.1
6.1
6.1.3.1
6.15.1
6.15.9
6.20.2

CLI-73-12, 6 AEC 241(1973) 2.11.1
2.9.4.1.4
2.9.5.11
3.5

CLI-75-1, 1 NRC 1(1975) 2.9.9.2.1
2.9.9.3
3.11.3
3.13.1
5.1
5.5

(PRAIRIE ISLAND NUCLEAR GENERATING STATION, UNITS 1 AND 2),
ALAB-343, 4 NRC 169(1976) 5.15

(QUANICASSEE PLANT, UNITS 1 AND 2),
CLI-74-29, 8 AEC 10(1974) 1.9

CLI-74-37, 8 AEC 627(1974) 1.9

(R.E. GINNA NUCLEAR PLANT, UNIT 1),
LBP-83-73, 18 NRC 1231(1983) 2.5.4
2.9.10.1

(RANCHO SECO NUCLEAR GENERATING STATION),
ALAB-655, 14 NRC 799(1981) 2.9.5.7
4.6
5.6.3

(RIVER BEND STATION, UNITS 1 AND 2),
ALAB-183, 7 AEC 222(1974) 2.9.1

(RIVER BEND STATION, UNITS 1 AND 2).

	2.9.4.1.4
	2.9.5.1
ALAB-317, 3 NRC 175(1976)	3.7.3.4
	5.2
ALAB-329, 3 NRC 607(1976)	2.9.7
	2.9.7.1
	5.8.1
ALAB-358, 4 NRC 558(1976)	2.9.4.1.4
	3.6
ALAB-383, 5 NRC 609(1977)	5.6.1
ALAB-444, 6 NRC 760(1977)	2.10.2
	2.9.3.3.3
	2.9.5.7
	3.1.2.5
	3.12.1.2
	3.4.2
	3.7.3.4
	6.16.2
	6.20.3
	6.9.2.1
LBP-74-74, 8 AEC 669(1974)	2.11.5
LBP-75-10, 1 NRC 246(1975)	3.5
LBP-83-52A, 18 NRC 265(1983)	2.9.9.2.2

(SALEM NUCLEAR GENERATING STATION, UNIT 1).

ALAB-588, 11 NRC 533(1980)	5.12.2.1
ALAB-650, 14 NRC 43(1981)	4.2
	4.4.2
	5.10.1
	5.10.3
	5.5.1
	6.15.1.2
	6.15.9
LBP-79-14, 9 NRC 557(1979)	3.3.1.2
	3.5.3
LBP-80-27, 12 NRC 435(1980)	6.15

(SALEM NUCLEAR GENERATING STATION, UNITS 1 AND 2).

ALAB-136, 6 AEC 487(1973)	2.9.2
	2.9.3

(SALEM NUCLEAR GENERATING STATION, UNITS 1 AND 2),
2.9.3.1

(SAN ONOFRE NUCLEAR GENERATING STATION, UNIT 1),
CLI-85-10, 21 NRC 1569(1985) 6.26

(SAN ONOFRE NUCLEAR GENERATING STATION, UNIT 2 AND 3),
ALAB-673, 15 NRC 688(1982) 3.17
5.7.1
5.8.13

CLI-82-11, 15 NRC 138(1982) 2.9.9.4
3.13.1
5.12.3

LBP-82-46, 17 NRC 153(1982) 3.14.2

(SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 1 AND 2),
ALAB-680, 16 NRC 127(1982) 5.5.1
5.6.1
5.6.3
5.7
5.7.1
6.16.1
6.5.1

(SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3),
ALAB-199, 7 AEC 478(1974) 5.7.1
ALAB-212, 7 AEC 986(1974) 3.3.2.4
ALAB-268, 1 NRC 383(1975) 3.4.3
3.7.3.1
5.6.4
6.16.1
6.16.3

ALAB-432, 6 NRC 465(1977) 5.6.1

ALAB-717, 17 NRC 346(1983) 1.8
3.11
3.11.1
3.11.1.1
3.11.1.1.1
3.11.2
3.17
3.4
4.2

(SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3),

4.2.2
6.5.1LBP-77-35, 5 NRC 1290(1977) 3.1.2.2
6.20.1LBP-81-36, 14 NRC 691(1981) 3.1.2.3
3.4.2
5.14

LBP-82-3, 15 NRC 61(1982) 3.17

(SEABROOK STATION),

ALAB-731, 17 NRC 1073(1983) 5.12.2

(SEABROOK STATION, UNIT 2),

CLI-84-6, 19 NRC 975(1984) 2.9.4.1.1
2.9.5.1
3.4.5

(SEABROOK STATION, UNITS 1 AND 2),

ALAB-271, 1 NRC 478(1975) 3.15
5.12.2.1ALAB-293, 2 NRC 660(1975) 3.3.1
3.3.4
5.8.2ALAB-295, 2 NRC 668(1975) 3.3.1
3.3.4
5.8.2ALAB-338, 4 NRC 10(1976) 5.7
5.7.1ALAB-349, 4 NRC 235(1976) 3.17
3.7.3.3
5.18
5.4

ALAB-350, 4 NRC 365(1976) 5.18

ALAB-356, 4 NRC 525(1976) 5.6.1
5.7

ALAB-366, 5 NRC 39(1977) 6.15.3.1

ALAB-390, 5 NRC 733(1977) 6.20.5

(SEABROOK STATION, UNITS 1 AND 2),
ALAB-422, 6 NRC 33(1977)

3.1.1
3.1.4.3
3.1.5
3.12.1
3.13.1
3.16
3.16.1
4.2
4.3
4.4
5.6.1
5.6.3
6.1.4
6.15
6.15.4.1
6.15.4.2
6.15.5
6.15.8.2

ALAB-423, 6 NRC 115(1977)

4.3
5.6.5

ALAB-471, 7 NRC 477(1978)

3.11.1.5
3.16
3.7.2
3.7.3.6
6.15.4
6.15.4.1
6.15.4.2
6.15.6.1.2

ALAB-488, 8 NRC 187(1978)

2.6
2.9.9.5
2.9.9.6
3.6
6.17.1

ALAB-495, 8 NRC 304(1978)

6.15.4

ALAB-499, 8 NRC 319(1978)

6.15.4

ALAB-513, 8 NRC 694(1978)

3.1.2.1
5.6.1

ALAB-520, 9 NRC 48(1979)

3.11.1.1
3.11.1.6

ALAB-548, 9 NRC 640(1979)

5.15.2

ALAB-557, 10 NRC 153(1979)

6.15.4

ALAB-623, 12 NRC 670(1980)

6.26

ALAB-734, 18 NRC 11(1983)

5.12.2

(SEABROOK STATION, UNITS 1 AND 2).

ALAB-737, 18 NRC 168(1983)	1.8 2.9.5 2.9.5.5 5.12.2 5.12.2.1 5.6.1
ALAB-748, 18 NRC 1184(1983)	3.1.4.1 3.1.4.2
ALAB-749, 18 NRC 1195(1983)	3.1.4.1 3.1.4.2
ALAB-751, 18 NRC 1313(1983)	3.1.4.1 3.1.4.2
ALAB-757, 18 NRC 1356(1983)	3.1.4.1 3.1.4.2
ALAB-762, 19 NRC 565(1984)	5.12.2.1
CLI-76-17, 4 NRC 451(1976)	6.16.1
CLI-77-25, 6 NRC 535(1977)	2.10.2 5.15
CLI-77-8, 5 NRC 503(1977)	3.1.2.1.1 5.15 5.19.3 5.7 5.7.1 6.15 6.15.2 6.15.3.1 6.15.4.1 6.15.4.2
CLI-78-1, 7 NRC 1(1978)	3.17 5.12.3 5.6.3 5.7 6.15.3 6.15.8.4 6.8
CLI-78-14, 7 NRC 952(1978)	5.19.1 6.15.4 6.15.8.1
CLI-78-15, 8 NRC 1(1978)	4.7
CLI-78-17, 8 NRC 179(1978)	6.15.8.4
CLI-83-23, 18 NRC 311(1983)	2.9.5.5

(SEABROOK STATION, UNITS 1 AND 2),

LBP-74-36, 7 AEC 877(1974) 1.9
3.5
3.5.3

LBP-75-28, 1 NRC 513(1975) 2.11.2.4

LBP-75-9, 1 NRC 243(1975) 3.5.2.2

LBP-82-106, 16 NRC 1649(1982) 2.9.3.1
2.9.3.2
2.9.5
2.9.5.3
2.9.5.7
4.5
5.12.2.1
6.15.7

LBP-82-76, 16 NRC 102(1982) 1.7.1
2.10.2
2.9.5.1
3.1.2.1.1
3.17
6.15.1.1

LBP-83-17, 17 NRC 490(1983) 2.11.2
2.11.2.4
2.11.2.6
2.11.2.8

LBP-83-20A, 17 NRC 586(1983) 2.11.5.2
3.7.2

LBP-83-32A, 17 NRC 1170(1983) 3.5.2.3
3.5.3

LBP-83-9, 17 NRC 403(1983) 2.10.2

(SHEARON HARRIS NUCLEAR PLANT, UNITS 1 AND 2),

LBP-84-15, 19 NRC 837(1984) 3.1.2.5
3.12.3
3.5.2.3
3.5.3

LBP-84-7, 19 NRC 432(1984) 3.1.2.5
3.12.3
3.5.2.3
3.5.3

(SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4),

ALAB-184, 7 AEC 229(1974) 6.19.2
6.5.3.2

(SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4),
ALAB-490, 8 NRC 234(1978) 3.7.3.2
6.15.5

ALAB-526, 9 NRC 122(1979) 2.9.12
2.9.3.3.3
5.19.1

ALAB-577, 11 NRC 18(1980) 3.1.2.1.1
3.16
3.3.1
3.3.1.1
3.4
3.7.3.7
4.3
5.19.1
5.2
5.5
5.6.1
6.16.1

ALAB-581, 11 NRC 233(1980) 1.8
3.1.2.1.1
3.3.1
3.7.3.7
5.6.3

CLI-79-10, 10 NRC 675(1979) 4.4.2

CLI-79-5, 9 NRC 607(1979) 3.1.2.1
4.4.2

CLI-80-12, 11 NRC 514(1980) 1.8
2.5.1
3.1.2.1.1
3.1.2.5
3.16
3.3.1
3.3.1.1
3.4
3.7.3.7
4.3
5.19.1
5.2
5.5
5.6.1
5.6.3
6.16.1

LBP-78-2, 7 NRC 83(1978) 4.4
4.4.1.1
4.4.2

(SHEARON HARRIS NUCLEAR POWER PLANT, UNITS 1 AND 2),

LBP-82-119A, 16 NRC 2069(1982) 2.9.1
2.9.5.1
2.9.5.6
6.20.4
6.5.3.2

LBP-83-27A, 17 NRC 971(1983) 6.15.6

(SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE),

ALAB-473, 7 NRC 737(1978) 2.9.4.1.1
2.9.4.1.4
2.9.4.2
2.9.5.3
2.9.7
5.8.1

ALAB-494, 8 NRC 299(1978) 3.1.4.1
3.1.4.2

ALAB-606, 12 NRC 156(1980) 5.4
6.15.1.1

CLI-79-6, 9 NRC 673(1979) 6.24.3
6.24.4

CLI-80-1, 11 NRC 1(1980) 3.1.1
3.1.4.2
4.4.2
4.5
5.15
6.16.1
6.24
6.24.3

(SHOREHAM NUCLEAR POWER STATION UNIT 1),

LBP-82-41, 15 NRC 129(1982) 3.4.5

(SHOREHAM NUCLEAR POWER STATION),

ALAB-99, 6 AEC 53(1973) 6.9.1

CLI-85-12, 21 NRC 1587(1985) 6.15.1.1

(SHOREHAM NUCLEAR POWER STATION, UNIT 1),

ALAB-743, 18 NRC 387(1983) 2.9.3.3
2.9.3.3.3
5.6.1

(SHOREHAM NUCLEAR POWER STATION, UNIT 1),
ALAB-769, 19 NRC 995(1984) 2.9.3.3.4

ALAB-773, 19 NRC 1333(1984) 2.11.2.4

ALAB-777, 20 NRC 21(1984) 3.1.4.1
3.1.4.2

ALAB-780, 20 NRC 378(1984) 5.12.2.1
5.8.3.1

ALAB-787, 20 NRC 1097(1984) 5.12.2

ALAB-788, 20 NRC 1102(1984) 3.1.2.7
5.1
6.16.1.3
6.16.2
6.9.2.2

ALAB-810, 21 NRC 1616(1985) 5.7.1

CLI-84-20, 20 NRC 1061(1984) 3.1.4.1

CLI-84-21, 20 NRC 1437(1984) 5.7.1

CLI-84-8, 19 NRC 1154(1984) 3.1.1
6.19

CLI-84-9, 19 NRC 1323(1984) 6.15.1.1

LBP-82-107, 16 NRC 1667(1982) 3.1.2.7
3.13.1

LBP-82-115, 16 NRC 1923(1982) 2.11.5.2
2.9.9.5
3.1.2.1
3.1.2.7
6.17.1

LBP-82-19, 15 NRC 601(1982) 2.10.2
6.9.2.1

LBP-82-73, 16 NRC 974(1982) 3.1.2.7

LBP-82-75, 16 NRC 986(1982) 2.9.5
2.9.5.1

LBP-82-80, 16 NRC 112(1982) 6.23.3.2

LBP-82-82, 16 NRC 114(1982) 2.11.2.4
2.11.2.5
2.11.2.6
2.11.4

LBP-83-13, 17 NRC 469(1983) 2.10.2

(SHOREHAM NUCLEAR POWER STATION, UNIT 1),
LBP-83-21, 17 NRC 593(1983) 3.1.2.7
5.12.2

LBP-83-22, 17 NRC 608(1983) 6.16.2
6.20.3

LBP-83-30, 17 NRC 1132(1983) 2.10.2
2.9.5.5
3.14.2
3.4.4
4.3
4.4
4.4.1

LBP-83-42, 18 NRC 112(1983) 2.9.3.3.1
2.9.5.5

LBP-83-57, 18 NRC 445(1983) 1.8
2.9.9
3.1.2.5
3.11.2
3.14.2
3.16
3.8.1
6.15.1.1
6.15.6
6.9.1
6.9.2.2

LBP-83-61, 18 NRC 700(1983) 2.11.3
3.11.1.5

LBP-83-72, 18 NRC 1221(1983) 2.11.2.4

LBP-84-29A, 20 NRC 385(1984) 3.1.4.1

LBP-84-30, 20 NRC 426(1984) 2.9.5.5

LBP-84-45, 20 NRC 1343(1984) 6.19

LBP-84-53, 20 NRC 1531(1984) 5.19.3
6.5.4.1

LBP-85-12, 21 NRC 644(1985) 1.8
3.1.2.6

(SHOREHAM NUCLEAR STATION, UNIT 1),
LBP-77-11, 5 NRC 481(1977) 2.9.4.1.2

LBP-81-18, 14 NRC 71(1981) 3.4.1
6.14

(SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2),

ALAB-446, 6 NRC 870(1977)	6.19.1
ALAB-523, 9 NRC 58(1979)	2.9.3.3.3 2.9.3.3.4
ALAB-552, 10 NRC 1(1979)	2.9.3.3.3
ALAB-556, 10 NRC 30(1979)	3.1.4.1 3.1.4.2 5.2
ALAB-559, 10 NRC 162(1979)	2.9.3.3.3
ALAB-572, 10 NRC 693(1979)	3.15
CLI-80-34, 12 NRC 407(1980)	2.9.3.3.5
LBP-77-61, 6 NRC 674(1977)	6.19.1
LBP-79-16, 9 NRC 711(1979)	2.9.3.3.3
UNREPORTED(1980)	2.9.3.3.4

(SKAGIT/HANFORD NUCLEAR POWER PROJECT, UNITS 1 AND 2),

ALAB-683, 16 NRC 160(1982)	5.8.1
ALAB-700, 16 NRC 1329(1982)	2.9.4.1.2.
ALAB-712, 17 NRC 81(1983)	2.9.7
LBP-82-26, 15 NRC 74(1982)	2.9.4.1.1
LBP-82-74, 16 NRC 981(1982)	2.9.3 2.9.3.3 2.9.3.3.3 2.9.4.1.1 2.9.4.1.2

(SOUTH TEXAS PROJECT UNITS 1 AND 2),

ALAB-672, 15 NRC 677(1982)	3.1.4.1 3.1.4.2
CLI-82-9, 15 NRC 136(1982)	3.1.4.2

(SOUTH TEXAS PROJECT, UNITS 1 AND 2),

ALAB-381, 5 NRC 582(1977)	3.1.2.1.1 3.1.2.5 4.4
---------------------------	-----------------------------

(SOUTH TEXAS PROJECT, UNITS 1 AND 2),

	6.16.1
	6.3.1
ALAB-549, 9 NRC 644(1979)	2.9.3.3.3
	2.9.4.1.2
	2.9.5.1
ALAB-575, 11 NRC 14(1980)	3.17
ALAB-639, 13 NRC 469(1981)	2.11.2.4
	5.12.2.1
	5.8.3.2
	6.23.3.1
ALAB-799, 21 NRC 350(1985)	2.9.3.3.3
	2.9.3.5
	2.9.5.5
	2.9.9
	3.1.2.1
	3.13
	3.3.4
	5.10.3
	5.5.1
CLI-77-13, 5 NRC 1303(1977)	3.17
	6.3.1
CLI-78-5, 7 NRC 397(1978)	6.3
CLI-80-32, 12 NRC 281(1980)	2.2
LBP-79-10, 9 NRC 439(1979)	2.9.4.1.1
	2.9.4.1.2
	2.9.4.2
	3.17
	6.15
LBP-79-27, 10 NRC 563(1979)	3.1.2.2
	3.17
	6.3
LBP-79-5, 9 NRC 193(1979)	2.11.2.6
	2.11.5
LBP-81-54, 14 NRC 918(1981)	3.1.2.5
	3.4.2
LBP-82-91, 16 NRC 1364(1982)	2.9.5.5
	6.16.1
LBP-83-26, 17 NRC 945(1983)	2.10.2
LBP-83-37, 18 NRC 52(1983)	2.9.5.5
	6.8

(SOUTH TEXAS PROJECT, UNITS 1 AND 2).

LBP-83-49, 18 NRC 239(1983)	6.20.4
LBP-84-13, 19 NRC 659(1984)	3.7.3.7
LBP-85-19, 21 1707(1985)	4.4.1.1 4.4.2 5.6.1 6.4.2.3
LBP-85-6, 21 NRC 447(1985)	6.5.4.1
LBP-85-8, 21 NRC 516(1985)	3.1.2.3
LBP-85-9, 21 NRC 524(1985)	2.9.5.5

(ST. LUCIE NUCLEAR PLANT UNIT 2).

LBP-81-28, 14 NRC 333(1981)	6.3.2
-----------------------------	-------

(ST. LUCIE NUCLEAR PLANT UNITS 1 AND 2; TURKEY POINT, UNITS 3 AND 4).

LBP-77-23, 5 NRC 789(1977)	2.9.3.3.3 3.1.2.1.1
----------------------------	------------------------

(ST. LUCIE NUCLEAR PLANT, UNIT 2).

ALAB-274, 1 NRC 497(1975)	5.13.1.1
ALAB-280, 2 NRC 3(1975)	4.2.2 5.13.3 5.5.2
ALAB-355, 3 NRC 830(1976)	3.11.4 4.4 5.10.1 5.10.3 5.5.1 6.19.2.1
ALAB-404, 5 NRC 1185(1977)	5.7.1
ALAB-420, 6 NRC 8(1977)	2.9.3.3.3 2.9.3.3.4 5.5.3 6.3
ALAB-435, 6 NRC 541(1977)	5.10.1 6.15.4 6.15.4.1 6.23.3.1
ALAB-553, 10 NRC 12(1979)	3.3.2.4

(ST. LUCIE NUCLEAR PLANT, UNIT 2),

ALAB-579, 11 NRC 223(1980) 4.4.1.1
5.12.1
6.24

ALAB-661, 14 NRC 1117(1981) 2.5.1
6.3.1

CLI-78-12, 7 NRC 939(1978) 2.9.3.3.3
2.9.3.6
2.9.7
5.8.1
6.3
6.3.1
6.3.2

CLI-80-41, 12 NRC 650(1980) 5.17

LBP-79-4, 9 NRC 164(1979) 2.11.2
6.3.3
6.3.3.1

LBP-81-58, 14 NRC 1167(1981) 3.17

(ST. LUCIE PLANT, UNIT NO. 2),

ALAB-665, 15 NRC 22(1982) 2.9.3.6
6.3
6.3.2

LBP-82-21, 15 NRC 639(1982) 6.3

(ST. LUCIE PLANT, UNIT 1; TURKEY POINT PLANT, UNITS 3 AND 4),

ALAB-428, 6 NRC 221(1977) 6.3
6.3.1

(STANISLAUS NUCLEAR PROJECT, UNIT 1),

ALAB-400, 5 NRC 1175(1977) 2.9.3
3.1.2.2
3.5.2.1
5.8.5

ALAB-550, 9 NRC 683(1979) 2.11.2
2.11.5
2.11.6

LBP-78-20, 7 NRC 1038(1978) 2.11.2
2.11.2.2

LBP-83-2, 17 NRC 45(1983) 1.9

(STANISLAUS NUCLEAR PROJECTS, UNIT 1),
CLI-82-5, 15 NRC 404(1982) 1.9

(STERLING POWER PROJECT, UNIT 1),
ALAB-502, 8 NRC 383(1978) 3.7.3.2
5.1
6.15.4.1
6.15.4.2

ALAB-507, 8 NRC 551(1978) 6.13

ALAB-596, 11 NRC 867(1980) 1.9

CLI-80-23, 11 NRC 731(1980) 6.15.4

(SUMMIT POWER STATION, UNITS 1 AND 2),
ALAB-516, 9 NRC 5(1979) 1.3
6.2

(SURRY NUCLEAR POWER STATION, UNITS 1 AND 2),
CLI-80-4, 11 NRC 405(1980) 6.15.1.1

(SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2),
ALAB-148, 6 AEC 642(1973) 2.9.3.3.2

ALAB-593, 11 NRC 761(1980) 5.12.2

ALAB-613, 12 NRC 317(1980) 2.11.2
2.11.2.8
2.11.3
2.11.4
2.11.6

ALAB-641, 13 NRC 550(1981) 3.5.5
5.12.2.1
5.8.5

ALAB-693, 16 NRC 952(1982) 2.7.2
5.10.3
6.16.1

CLI-80-17, 11 NRC 678(1980) 5.14

LBP-79-6, 9 NRC 291(1979) 2.9.5.10
2.9.5.4
6.15.6.1
6.9.1

(SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2).

LBP-80-18, 11 NRC 906(1980) 2.11.2.2
3.1.1
6.15.8.1

LBP-81-8, 13 NRC 335(1981) 3.5
3.5.2.3
3.5.3

(THREE MILE ISLAND NUCLEAR STATION UNIT NO.),

ALAB-685, 16 NRC 449(1982) 4.6

(THREE MILE ISLAND NUCLEAR STATION, UNIT 2),

ALAB-454, 7 NRC 39(1978) 2.10.1.2
2.10.2
5.2

ALAB-474, 7 NRC 746(1978) 2.9.2

(THREE MILE ISLAND NUCLEAR STATION, UNIT NO. 1),

ALAB-697, 16 NRC 1265(1982) 2.9.9.1
3.7

ALAB-698, 16 NRC 1290(1982) 6.20.3

ALAB-699, 16 NRC 1324(1982) 3.1.2.2
4.4
4.4.1.1
4.4.2

CLI-82-31, 16 NRC 1236(1982) 3.1.2.1.
6.10.1.1

LBP-83-76, 18 NRC 1266(1983) 2.9.5.1
2.9.5.3
2.9.5.6
2.9.5.7
3.4

(THREE MILE ISLAND NUCLEAR STATION, UNIT NO.1),

ALAB-705, 16 NRC 1733(1982) 6.12.1.2

(THREE MILE ISLAND NUCLEAR STATION, UNIT NO),

LBP-82-34A, 15 NRC 914(1982) 3.14.2

LBP-82-86, 16 NRC 119(1982) 3.1.2.1

(THREE MILE ISLAND NUCLEAR STATION, UNIT 1)).

LBP-80-17, 11 NRC 893(1980) 2.11.5.2

LBP-81-50, 14 NRC 888(1981) 6.11
6.23
6.23.1

LBP-81-60, 14 NRC 1724(1981) 3.4.1

LBP-82-56, 16 NRC 281(1982) 3.1.2.1
6.11

(THREE MILE ISLAND NUCLEAR STATION, UNIT 1)).

ALAB-715, 17 NRC 102(1983) 3.4
6.16.1.2

ALAB-729, 17 NRC 814(1983) 2.9.5.7
3.4.1
5.6.1

ALAB-738, 18 NRC 177(1983) 4.4.1
4.4.1.1
4.4.2
5.18
6.5.1
6.5.4.1

ALAB-766, 19 NRC 981(1984) 5.19
5.19.2

ALAB-772, 19 NRC 1193(1984) 2.10.1
2.11.5.2
2.2
2.9.2
2.9.9
3.1.2.5
3.12
3.12.3
3.12.4
3.14.2
3.4.4
3.7
3.7.1
3.7.2
3.7.3.7
4.2.2
6.27

ALAB-774, 19 NRC 1350(1984) 3.14.2
6.5.4.1

ALAB-791, 20 NRC 1579(1984) 3.5.3
5.12.2

(THREE MILE ISLAND NUCLEAR STATION, UNIT 1),
5.12.2.1

ALAB-807, 21 NRC 1195(1985) 2.9.10.1
3.3.7
3.5.5
4.4.2
6.23.3.1

CLI-79-8, 10 NRC 141(1979) 2.11.2.2
2.11.4

CLI-80-16, 11 NRC 674(1980) 3.4

CLI-80-19, 11 NRC 700(1980) 2.9.10.1

CLI-80-20, 11 NRC 705(1980) 2.9.10.1

CLI-80-5, 11 NRC 408(1980) 3.7.3.7

CLI-83-22, 18 NRC 299(1983) 6.16.2
6.20.3

CLI-83-25, 18 NRC 327(1983) 2.10.1.2
2.9.3
2.9.3.3.3
2.9.4
2.9.4.1

CLI-83-3, 17 NRC 72(1983) 6.5.1

CLI-83-5, 17 NRC 331(1983) 6.5.1

CLI-84-11, 20 NRC 1(1984) 2.9.5.7
3.4.1
5.6.1

CLI-84-17, 20 NRC 801(1984) 5.7.1

CLI-85-2, 21 NRC 282(1985) 2.11.5.2
2.9.10.1
2.9.4.1.1
2.9.9
3.1.2.5
3.12
3.12.3
3.12.4
3.14.2
3.4.4
3.7
3.7.1
3.7.2
3.7.3.7
4.2.2

CLI-85-5, 21 NRC 566(1985) 3.1.4.2

(THREE MILE ISLAND NUCLEAR STATION, UNIT 1),

CLI-85-7, 21 NRC 1104(1985) 4.4.2
4.4.4

CLI-85-7, 21 NRC 1111(1985) 3.14.2

CLI-85-9, 21 NRC 1118(1985) 3.7.3.7
6.10.1

LBP-84-47, 20 NRC 1405(1984) 4.2.2

(THREE MILE ISLAND NUCLEAR STATION, UNIT 2),

ALAB-384, 5 NRC 612(1977) 2.9.3.3.3

ALAB-456, 7 NRC 63(1978) 2.9.5.6
6.20.4

ALAB-486, 8 NRC 9(1978) 4.4.2
5.5.1

ALAB-525, 9 NRC 111(1979) 3.14.1

CLI-78-3, 7 NRC 307(1978) 5.12.3
5.7

CLI-80-22, 11 NRC 724(1980) 2.11.5

(THREE MILE ISLAND NUCLEAR STATION, UNITS 1 AND 2),

CLI-73-16, 6 AEC 391(1973) 2.9.3

(THREE MILE ISLAND NUCLEAR STATION, UNITS 1 AND 2), (OYSTER CREEK NUCLEAR GENERATING STATION),

CLI-85-4, 21 NRC 561(1985) 6.24.1

(TROJAN NUCLEAR PLANT),

ALAB-181, 7 AEC 207(1974) 3.4.2
5.6.6
6.16.1.3

ALAB-451, 6 NRC 889(1977) 3.1.2.5
6.1.6
6.16.1

ALAB-496, 8 NRC 308(1978) 2.9.9.2.2
5.8.4.1

ALAB-524, 9 NRC 65(1979) 5.7.1

ALAB-531, 9 NRC 263(1979) 6.15

(TROJAN NUCLEAR PLANT).

6.15.4
6.15.9
6.27

ALAB-534, 9 NRC 287(1979)

2.5.1
3.4
6.1.3.1
6.1.4.4

ALAB-796, 21 NRC 4(1985)

4.6

LBP-77-69, 6 NRC 1179(1977)

6.1.6

LBP-78-32, 8 NRC 413(1978)

3.16

LBP-78-40, 8 NRC 717(1978)

6.1.3.1
6.1.4.4

(TURKEY POINT NUCLEAR GENERATING UNITS 3 AND 4).

LBP-79-21, 10 NRC 183(1979)

2.5.3
2.9.3.3.3
2.9.5.5

(TURKEY POINT PLANT, UNITS 3 AND 4).

ALAB-660, 14 NRC 987(1981)

3.5.2.3
6.15.4
6.15.4.2

CLI-81-31, 14 NRC 959(1981)

2.9.3
2.9.3.1

LBP-81-14, 13 NRC 677(1981)

6.1.4.4
6.15.1.2
6.15.4

LBP-81-30, 14 NRC 357(1981)

5.7.1

(TYRONE ENERGY PARK, UNIT 1).

ALAB-464, 7 NRC 372(1978)

3.1.2.6
4.4.1.1

ALAB-492, 8 NRC 251(1978)

2.9.5.13
5.8.1

CLI-80-36, 12 NRC 523(1980)

2.9.4.1.4

LBP-77-37, 5 NRC 1298(1977)

2.11.5.2

(UCLA RESEARCH REACTOR),

LBP-81-29, 14 NRC 353(1981) 3.13.2

LBP-82-93, 16 NRC 1391(1982) 3.5.2

LBP-84-22, 19 NRC 1383(1984) 1.5.2
6.4.1

(UNITS 1 AND 2),

LBP-83-55, 18 NRC 415,(1983) 3.14
3.14.2

(UNPUBL. ASLB ORDER (FLOATING NUCLEAR POWER PLANTS)),

UNPUBL. ASL(1978) 6.15.1.2

(VALLECITOS NUCLEAR CENTER-GENERAL ELECTRIC TEST REACTOR, OPERATING LICENSE TR-1),

ALAB-720, 17 NRC 397(1983) 5.6.6

(VALLECITOS NUCLEAR CENTER, GENERAL ELECTRIC TEST REACTOR),

LBP-78-33, 8 NRC 461(1978) 2.11.2.4

(VERMONT YANKEE NUCLEAR POWER STATION),

ALAB-124, 6 AEC 358(1973) 3.1.1
4.4
4.4.1
4.4.1.1
4.4.2
5.6.1

ALAB-126, 6 AEC 393(1973) 4.4.1.1

ALAB-138, 6 AEC 520(1973) 2.11.1
3.1.1
4.4.1.1
4.4.2
4.4.4
6.16.1

ALAB-141, 6 AEC 576(1973) 4.4.

ALAB-179, 7 AEC 159(1974) 6.15.3
6.16.2
6.5.3.2

ALAB-194, 7 AEC 431(1974) 6.16.1

(VERMONT YANKEE NUCLEAR POWER STATION).

	6.16.1.1
	6.20.1
ALAB-217, 8 AEC 61(1974)	6.16.2
ALAB-229, 8 AEC 425(1974)	2.9.1
	3.16.1
	6.16.2
ALAB-245, 8 AEC 873(1974)	6.1.4.2
ALAB-392, 5 NRC 759(1977)	6.15.6
ALAB-421, 6 NRC 25(1977)	5.14
ALAB-57, WASH-1218,(1972)	6.20.4
CLI-74-40, 8 AEC 809(1974)	3.16.1
	6.16.2
	6.21.2
	6.9.1
CLI-74-43, 8 AEC 826(1974)	6.16.2
	6.21.2
	6.9.1
CLI-76-14, 4 NRC 163(1976)	5.6.2
	6.21.1

(VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1)).

ALAB-694, 16 NRC 958(1982)	5.13
CLI-82-10, 15 NRC 137(1982)	3.1.2.5
LBP-82-84, 16 NRC 118(1982)	3.1.2.1
	4.4.2
	5.7.1

(VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1)).

ALAB-114, 6 AEC 253(1973)	5.6.1
ALAB-642, 13 NRC 881(1981)	2.9.3.3.3
	2.9.3.3.4
	3.1.2.7
ALAB-643, 13 NRC 898(1981)	2.9.3.3.3
	5.7.1
ALAB-663, 14 NRC 1140(1981)	3.1.2.1
	3.12.3
	5.12.2

(VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1),
6.20.2

ALAB-710, 17 NRC 25(1983)	3.1.1 3.1.2.1 3.12.3
CLI-80-28, 11 NRC 817(1980)	6.3.1
CLI-81-26, 14 NRC 787(1981)	4.5 6.3.1
LBP-78-6, 7 NRC 209(1978)	2.9.3.3.3
LBP-81-11, 13 NRC 420(1981)	2.9.3.3.3

(WATERFORD STEAM ELECTRIC STATION),
ALAB-801, 21 NRC 479(1985) 6.16.1

(WATERFORD STEAM ELECTRIC STATION, UNIT 3),
ALAB-117, 6 AEC 261(1973) 5.10.2.1

ALAB-121, 6 AEC 319(1973)	5.10.3
ALAB-125, 6 AEC 371(1973)	2.9.3 2.9.4.1.4 2.9.5.1
ALAB-168, 6 AEC 1155(1973)	2.9.3.4
ALAB-220, 8 AEC 93(1974)	3.5.5 5.8.5
ALAB-242, 8 AEC 847(1974)	3.6 4.6 5.9
ALAB-258, 1 NRC 45(197)	4.6
ALAB-690, 16 NRC 893(1982)	5.4
ALAB-732, 17 NRC 1076(1983)	2.10.1.2 3.1.1 3.1.2.3 3.11 3.11.1.1 3.12.4 3.13 3.7 4.6 5.10.1 5.6.3

(WATERFORD STEAM ELECTRIC STATION, UNIT 3),
6.16.1.3
6.20.4
6.5.4.1

ALAB-753, 18 NRC 1321(1983) 3.5.3
4.4
4.4.1
4.4.2

ALAB-786, 20 NRC 1087(1984) 4.4.2
6.16.1.2
6.5.4.1

ALAB-792, 20 NRC 1585(1984) 5.6.1

ALAB-803, 21 NRC 575(1985) 3.1.2.7
4.4.2
6.16.1

LBP-70-31, 6 AEC 717(1973) 2.9.3.4

LBP-81-48, 14 NRC 877(1981) 3.5
3.5.3

LBP-82-100, 16 NRC 1550(1982) 6.15.3
6.9.1

(WATTS BAR NUCLEAR PLANT, UNITS 1 AND 2),
ALAB-413, 5 NRC 1418(1977) 2.9.4.1.1
2.9.4.1.2
2.9.4.1.4
2.9.4.2

(WEST CHICAGO RARE EARTHS FACILITY),
CLI-82-2, 15 NRC 23(1982) 2.2
2.5
6.13
6.15.1.2

CLI-82-21, 16 NRC 401(1982) 2.2

LBP-84-42, 20 NRC 1296(1984) 3.1.2.1
3.4
6.15.6

LBP-85-1, 21 NRC 11(1985) 2.11.2
2.11.2.4

LBP-85-3, 21 NRC 244(1985) 5.12.2
6.15.3
6.16.1

(WEST VALLEY REPROCESSING PLANT),
CLI-75-4, 1 NRC 273(1975)

2.11.1
2.9.3.3.3
2.9.3.3.4
2.9.5.5

(WESTERN NEW YORK NUCLEAR SERVICE CENTER),
CLI-81-29, 14 NRC 940(1981)

5.7.1
6.1.4

LBP-82-36, 15 NRC 1075(1982)
2.9.4.1.1
2.9.4.1.4
3.1.2.5

LBP-83-15, 17 NRC 476(1983) 3.1.2.1

(WILLIAM B. MCGUIRE NUCLEAR STATION, UNITS 1 AND 2),
ALAB-669, 15 NRC 453(1982)

3.11.1.1
4.4.2
5.10.3
5.6.1

(WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2),
ALAB-128, 6 AEC 399(1973)

6.9.1

ALAB-143, 6 AEC 623(1973) 6.16.1.1
6.5.4.1

ALAB-626, 13 NRC 17(1981) 4.3

LBP-77-20, 5 NRC 680(1977) 3.17
3.5.3

(WILLIAM H. ZIMMER STATION),
ALAB-79, 5 AEC 342(1972)

4.6
5.6.1

(WILLIAM H. ZIMMER NUCLEAR POWER STATION, UNIT NO. 1),
CLI-82-36, 16 NRC 1512(1982)

6.4.2
6.4.2.3

CLI-82-40, 16 NRC 1717(1982) 2.9.10.1

(WILLIAM H. ZIMMER NUCLEAR POWER STATION, UNIT 1),

CLI-83-4, 17 NRC 75(1983) 6.5.1

LBP-83-58, 18 NRC 640(1983) 2.9.5.5
3.1.2.1

LBP-84-33, 20 NRC 765(1984) 1.9

(WILLIAM H. ZIMMER NUCLEAR STATION),

ALAB-305, 3 NRC 8(1976) 2.9.5.1
4.3

ALAB-595, 11 NRC 860(1980) 2.9.3.3.3
2.9.7

ALAB-633, 13 NRC 94(1981) 5.4

LBP-79-17, 9 NRC 723(1979) 2.9.2

LBP-79-22, 10 NRC 213(1979) 2.9.5.5

LBP-79-24, 10 NRC 226(1979) 3.1.2.1
3.1.2.2
6.13

LBP-80-14, 11 NRC 570(1980) 2.9.3.3.3

LBP-81-2, 13 NRC 36(1981) 3.5.3

(WM. H. ZIMMER NUCLEAR POWER STATION, UNIT 1),

CLI-82-20, 16 NRC 109(1982) 3.14.2

LBP-82-47, 15 NRC 153(1982) 2.11.2.2

LBP-82-48, 15 NRC 154(1982) 4.2.2

LBP-83-12, 17 NRC 466(1983) 3.1.2.1

(WOLF CREEK GENERATING STATION, UNIT 1),

ALAB-784, 20 NRC 845(1984) 2.9.5.6
6.8

LBP-84-1, 19 NRC 29(1984) 2.9.5
2.9.5.1
2.9.5.5

LBP-84-17, 19 NRC 878(1984) 2.9.3.3

LBP-84-26, 20 NRC 53(1984) 3.4.2
4.2.2

(WOLF CREEK GENERATING STATION, UNIT 1),
6.16.1.3

(WOLF CREEK NUCLEAR GENERATING STATION),
ALAB-279, 1 NRC 559(1975) 2.9.3.1
2.9.4.1.1

ALAB-321, 3 NRC 293(1976) 3.1.2.1
3.1.2.2
6.19
6.19.1

CLI-77-1, 5 NRC 1(1977) 3.1.2.1
3.1.2.2
6.15.8.3
6.19
6.19.1

(WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1),
ALAB-307, 3 NRC 17(1976) 5.7.1

ALAB-311, 3 NRC 85(1976) 2.11.6
5.2
5.4

ALAB-327, 3 NRC 408(1976) 2.11.2.4
2.11.2.5
4.3
5.12.2.1
6.23.3.1

ALAB-331, 3 NRC 771(1976) 5.4
5.8.10
5.8.9

ALAB-424, 6 NRC 122(1977) 2.9.4.1.1
5.10.2
5.10.3
5.13.4
5.4

ALAB-462, 7 NRC 320(1978) 3.14.3
3.7.3.2
3.7.3.4
3.7.3.5.1
4.4.1
4.4.2

ALAB-477, 7 NRC 766(1978) 4.5

(WPPSS NUCLEAR PROJECT NO. 1), ALAB-771, 19 NRC 1183(1984)	3.4.5 3.5.3 6.1.4 6.1.4.3
LBP-83-16, 17 NRC 479(1983)	2.11.2.5 2.9.4.1.2 6.23.3.1
LBP-83-66, 18 NRC 780(1983)	2.9.5.3 2.9.5.5
LBP-84-9, 19 NRC 497(1984)	3.4.5
(WPPSS NUCLEAR PROJECT NO. 2), ALAB-722, 17 NRC 546(1983)	2.9.5.1 6.16.1 6.24
(WPPSS NUCLEAR PROJECT NO. 3), ALAB-747, 18 NRC 1167(1983)	2.9.3.3.4 2.9.5.5 6.4.1
ALAB-767, 19 NRC 984(1984)	2.9.3.3.3
LBP-84-17A, 19 NRC 1011(1984)	2.9.3.3.3
(WPPSS NUCLEAR PROJECT NOS. 1 AND 2), CLI-82-29, 16 NRC 122(1982)	3.4.5
(WPPSS NUCLEAR PROJECT 1), LBP-83-59, 18 NRC-667(1983)	2.9.3
(WPPSS NUCLEAR PROJECT 2), ALAB-571, 10 NRC 687(1979)	4.6 5.6.1 5.8.1
LBP-79-7, 9 NRC 330(1979)	2.9.4.1.2 2.9.4.1.4

(WPPSS NUCLEAR PROJECTS 1 AND 4),
ALAB-265, 1 NRC 374(1975) 4.6
5.9

(WPPSS NUCLEAR PROJECTS 3 AND 5),
ALAB-485, 7 NRC 986(1978) 5.6.3
6.18

ALAB-501, 8 NRC 381(1978) 5.15
5.6.1

CLI-77-11, 5 NRC 719(1977) 3.1.1
6.19.1

LBP-77-15, 5 NRC 643(1977) 3.1.2.2
6.19
6.19.1

LBP-77-16, 5 NRC 650(1977) 2.9.3

(YELLOW CREEK NUCLEAR PLANT, UNITS 1 AND 2),
ALAB-445, 6 NRC 865(1977) 1.7.1
2.5.3

ALAB-515, 8 NRC 702(1978) 6.15.8.5

(ZIMMER NUCLEAR POWER STATION, UNIT 1),
LBP-82-54, 16 NRC 210(1982) 2.9.3.3.3
2.9.4.1.2
3.14.2

(ZION STATION, UNITS 1 AND 2),
ALAB-116, 6 AEC 258(1973) 2.11.6
5.8.3.1

ALAB-154, 6 AEC 827(1973) 5.13.1.2
5.4

ALAB-185, 7 AEC 240(1974) 2.11.2.1
2.11.2.2

ALAB-222, 8 AEC 229(1974) 3.1.3
3.3.1
3.3.2.3

ALAB-226, 8 AEC 381(1974) 2.8.1.3
2.9.3.2
2.9.5.10

(ZION STATION, UNITS 1 AND 2).

2.9.9.1
3.1.4.1
3.12.1.1
3.7.2
5.10.1
5.13.1.1
6.16.1.2

ALAB-616, 12 NRC 419(1980)

2.5.1
3.1.2.1
3.4
5.13.2

CLI-74-35, 8 AEC 374(1974)

3.3.2.3

LBP-80-7, 11 NRC 245(1980)

6.15.1.1

CCCCCCCCC	IIIIIIIIII	TTTTTTTTTTT	AA	TTTTTTTTTTT	IIIIIIIIII	00000000	NN	NN
CCCCCCCCC	IIIIIIIIII	TTTTTTTTTTT	AAAA	TTTTTTTTTTT	IIIIIIIIII	0000000000	NNN	NN
CC	II	TT	AA AA	TT	II	00	00	NNN
CC	II	TT	AA AA	TT	II	00	00	NN NN
CC	II	TT	AA AA	TT	II	00	00	NN NN
CC	II	TT	AA AA	TT	II	00	00	NN NN
CC	II	TT	AAAAAAAAAAAA	TT	II	00	00	NN NN
CC	II	TT	AAAAAAAAAAAA	TT	II	00	00	NN NN
CC	II	TT	AA AA	TT	II	00	00	NN NN
CC	II	TT	AA AA	TT	II	00	00	NN NN
CC	II	TT	AA AA	TT	II	00	00	NN NN
CCCCCCCCC	IIIIIIIIII	TT	AA AA	TT	IIIIIIIIII	0000000000	NN	NN
CCCCCCCCC	IIIIIIIIII	TT	AA AA	TT	IIIIIIIIII	00000000	NN	NN

IIIIIIIIII	NN	NN	DDDDDDDDDD	EEEEEEEEEEEE	XX	XX
IIIIIIIIII	NNN	NN	DDDDDDDDDD	EEEEEEEEEEEE	XXX	XXX
II	NNNN	NN	DD DD	EE	XXX	XXX
II	NN NN	NN	DD DD	EE	XXX	XXX
II	NN NN	NN	DD DD	EE	XXXXXX	
II	NN NN	NN	DD DD	EEEEEEEE	XXXX	
II	NN NN	NN	DD DD	EEEEEEEE	XXXX	
II	NN NN	NN	DD DD	EE	XXXXXX	
II	NN NN	NN	DD DD	EE	XXX	XXX
II	NN NN	NN	DD DD	EE	XXX	XXX
IIIIIIIIII	NN	NN	DDDDDDDDDD	EEEEEEEEEEEE	XX	XX
IIIIIIIIII	NN	N	DDDDDDDDDD	EEEEEEEEEEEE	XX	XX

ALAB-16	NORTHERN STATES POWER CO. (MONTICELLO PLANT, UNIT 1), 4 AEC 435 (1970)	2.11.2.4 6.23.3.1
ALAB-25	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION), 4 AEC 633 (1971)	5.7
ALAB-57	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), WASH-1218, (1972)	6.20.4
ALAB-73	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT), 5 AEC 297 (1972)	4.6
ALAB-74	BOSTON EDISON CO. (PILGRIM NUCLEAR STATION), 5 AEC 308 (1972)	5.10.2.4
ALAB-75	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 2), 5 AEC 309 (1972)	3.10
ALAB-77	DETROIT EDISON CO. (ENCLICO FERMI ATOMIC POWER PLANT), 5 AEC 315 (1972)	4.6
ALAB-78	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNIT 2), 5 AEC 319 (1972)	3.1.1 3.16 4.2 5.6.1 5.6.3 6.20.4
ALAB-79	CINCINNATI GAS AND ELECTRIC CO. (WILLIAM H ZIMMER STATION), 5 AEC 342 (1972)	4.6 5.6.1
ALAB-81	BOSTON EDISON CO. (PILGRIM NUCLEAR POWER STATION), 5 AEC 348 (1972)	5.7.1

ALAB-82	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNIT 2), 5 AEC 350 (1972)	6.15.8.1 6.15.8.2
ALAB-83	BOSTON EDISON CO. (PILGRIM NUCLEAR STATION), 5 AEC 354 (1972)	3.1.1 3.11.1.1 3.16 4.2
ALAB-94	ARKANSAS POWER AND LIGHT CO. (ARKANSAS NUCLEAR-1, UNIT 2), 6 AEC 20 (1973)	3.11.2
ALAB-99	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION), 6 AEC 53 (1973)	6.9.1
ALAB-101	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 6 AEC 60 (1973)	2.8.1 2.8.1.1 2.8.1.3 3.1.4.1
ALAB-104	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2)), 6 AEC 179 (1973)	2.9.3 4.3
ALAB-105	DUQUESNE LIGHT CO. (BEAVER VALLEY POWER STATION, UNIT 1), 6 AEC 181 (1973)	2.9.3
ALAB-107	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 6 AEC 188 (1973)	2.11.1 2.9.3.1 2.9.4.1.4 2.9.5.11 2.9.7.1 5.6.3
ALAB-108	IOWA ELECTRIC LIGHT AND POWER CO. (DUANE ARNOLD ENERGY CENTER), 6 AEC 195 (1973)	2.10.1

ALAB-108	IOWA ELECTRIC LIGHT AND POWER CO.	2.10.1.2 3.4.2
ALAB-109	DUQUESNE LIGHT CO. (BEAVER VALLEY POWER STATION, UNIT 1), 6 AEC 243 (1973)	2.6 2.6.2 2.9.3 2.9.5.1 2.9.5.3 2.9.7.1 3.4.1 3.5 5.6.3
ALAB-110	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 6 AEC 247 (1973)	2.11.1 2.9.4.1.4 2.9.5.11
ALAB-113	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (HANFORD NO. 2 NUCLEAR POWER PLANT), 6 AEC 251 (1973)	3.10
ALAB-114	SOUTH CAROLINA ELECTRIC AND GAS CO. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), 6 AEC 253 (1973)	5.6.1
ALAB-115	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 6 AEC 257 (1973)	5.10.2.2
ALAB-116	COMMONWEALTH EDISON CO. (ZION STATION, UNITS 1 AND 2), 6 AEC 258 (1973)	2.11.6 5.8.3.1
ALAB-117	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 6 AEC 261 (1973)	5.10.2.1
ALAB-118	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 6 AEC 263 (1973)	2.11.5

ALAB-121	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 6 AEC 319 (1973)	5.10.3
ALAB-122	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 6 AEC 322 (1973)	2.11.5 2.11.6 5.4 5.8.3.1
ALAB-123	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 6 AEC 331 (1973)	3.1.1 3.10 3.7.2 5.5.1 5.5.2
ALAB-124	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 6 AEC 358 (1973)	3.1.1 4.4 4.4.1 4.4.1.1 4.4.2 5.6.1
ALAB-125	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 6 AEC 371 (1973)	2.9.3 2.9.4.1.4 2.9.5.1
ALAB-126	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 6 AEC 393 (1973)	4.4.1.1
ALAB-128	DUKE POWER CO. (WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2), 6 AEC 399 (1973)	6.9.1
ALAB-130	MISSISSIPPI POWER AND LIGHT CO. (GRAND GULF NUCLEAR STATION, UNITS 1 AND 2), 6 AEC 423 (1973)	2.6.3.3 2.9.3 2.9.5.1 2.9.5.3 3.5

ALAB-136	PUBLIC SERVICE ELECTRIC AND GAS CO. (SALEM NUCLEAR GENERATING STATION, UNITS 1 AND 2), 6 AEC 487 (1973)	2.9.2 2.9.3 2.9.3.1
ALAB-137	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNIT 2), 6 AEC 491 (1973)	3.7.2 6.23.3.1
ALAB-138	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 6 AEC 520 (1973)	2.11.1 3.1.1 4.4.1.1 4.4.2 4.4.4 6.16.1
ALAB-140	MISSISSIPPI POWER AND LIGHT CO. (GRAND GULF NUCLEAR STATION, UNITS 1 AND 2), 6 AEC 575 (1973)	2.9.7 5.10.1
ALAB-141	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 6 AEC 576 (1973)	4.4.2
ALAB-143	DUKE POWER CO. (WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2), 6 AEC 623 (1973)	6.16.1.1 6.5.4.1
ALAB-144	MAINE YANKEE ATOMIC POWER CO. (MAINE YANKEE ATOMIC POWER STATION), 6 AEC 628 (1973)	5.10.2.1
ALAB-146	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 6 AEC 631 (1978)	2.9.3.2 2.9.4.1.4
ALAB-148	PENNSYLVANIA POWER AND LIGHT CO. (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), 6 AEC 642 (1973)	2.9.3.3.2

ALAB-153	COMMONWEALTH EDISON CO. (LASALLE COUNTY NUCLEAR STATION, UNITS 1 AND 2), 6 AEC 821 (1973)	4.4 4.4.2
ALAB-154	COMMONWEALTH EDISON CO. (ZION STATION, UNITS 1 AND 2), 6 AEC 827 (1973)	5.13.1.2 5.4
ALAB-157	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION), 6 AEC 858 (1973)	5.8.8
ALAB-158	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 6 AEC 999 (1973)	5.7.1
ALAB-159	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 2), 6 AEC 1001 (1973)	5.10.3
ALAB-161	MAINE YANKEE ATOMIC POWER CO. (MAINE YANKEE ATOMIC POWER STATION), 6 AEC 1003 (1973)	3.7.2 5.5.1
ALAB-164	TENNESSEE VALLEY AUTHORITY (BELLEFONTE NUCLEAR PLANT, UNITS 1 AND 2), 6 AEC 1143 (1973)	2.8.1.2
ALAB-165	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 6 AEC 1145 (1973)	5.11.2
ALAB-166	MAINE YANKEE ATOMIC POWER CO. (MAINE YANKEE ATOMIC POWER STATION), 6 AEC 1148 (1973)	3.7.2 5.12.1
ALAB-168	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 6 AEC 1155 (1973)	2.9.3.4

ALAB-172	DUQUESNE LIGHT CO. (BEAVER VALLEY POWER STATION, UNITS 1 AND 2), 7 AEC 42 (1974)	2.8.1.1 3.1.4.1
ALAB-175	MAINE YANKEE ATOMIC POWER CO. (MAINE YANKEE ATOMIC POWER STATION), 7 AEC 62 (1974)	3.7.2
ALAB-179	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 7 AEC 159 (1974)	6.15.3 6.16.2 6.5.3.2
ALAB-181	PORTLAND GENERAL ELECTRIC CO. (TROJAN NUCLEAR PLANT), 7 AEC 207 (1974)	3.4.2 5.6.6 6.16.1.3
ALAB-182	ALABAMA POWER CO. (JOSEPH M. FARLEY PLANT, UNITS 1 AND 2), 7 AEC 210 (1974)	2.9.5.3 3.17 3.4.1 3.5 3.5.3
ALAB-183	GULF STATES UTILITIES CO. (RIVER BEND STATION, UNITS 1 AND 2), 7 AEC 222 (1974)	2.9.1 2.9.4.1.4 2.9.5.1
ALAB-184	CAROLINA POWER AND LIGHT CO. (SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 7 AEC 229 (1974)	6.19.2 6.5.3.2
ALAB-185	COMMONWEALTH EDISON CO. (ZION STATION, UNITS 1 AND 2), 7 AEC 240 (1974)	2.11.2.1 2.11.2.2
ALAB-188	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 2), 7 AEC 323 (1974)	6.16.2

ALAB-191	BOSTON EDISON CO. (PILGRIM NUCLEAR STATION, UNIT 1), 7 AEC 417 (1974)	3.5.1.2 6.1.4.3
ALAB-192	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 7 AEC 420 (1974)	5.7 5.7.1
ALAB-194	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 7 AEC 431 (1974)	6.16.1 6.16.1.1 6.20.1
ALAB-195	MISSISSIPPI POWER AND LIGHT CO. (GRAND GULF NUCLEAR STATION, UNITS 1 AND 2), 7 AEC 455 (1974)	5.13.1.1 5.4
ALAB-199	SOUTHERN CALIFORNIA EDISON CO. (SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), 7 AEC 478 (1974)	5.7.1
ALAB-204	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 7 AEC 835 (1974)	5.10.3 5.8.13 6.4.1.1
ALAB-206	PHILADELPHIA ELECTRIC CO. (FULTON ENGINEERING STATION, UNITS 1 AND 2), 7 AEC 841 (1974)	2.9.7
ALAB-207	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 7 AEC 957 (1974)	5.10.1 5.13.2
ALAB-209	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 2), 7 AEC 971 (1974)	6.16.3
ALAB-212	SOUTHERN CALIFORNIA EDISON CO. (SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), 7 AEC 986 (1974)	3.3.2.4

ALAB-216	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 8 AEC 13 (1974)	2.9.5.1 6.16.2
ALAB-217	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 8 AEC 61 (1974)	6.16.2
ALAB-218	POTOMAC ELECTRIC POWER CO. (DOUGLAS POINT NUCLEAR GENERATING STATION, UNITS 1 AND 2), 8 AEC 79 (1974)	2.9.5.6 2.9.5.7 6.20.4 6.9.1
ALAB-220	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 8 AEC 93 (1974)	3.5.5 5.8.5
ALAB-221	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 8 AEC 95 (1974)	5.7.1
ALAB-222	COMMONWEALTH EDISON CO. (ZION STATION, UNITS 1 AND 2), 8 AEC 229 (1974)	3.1.3 3.3.1 3.3.2.3
ALAB-223	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 8 AEC 241 (1974)	2.9.3.3.4
ALAB-224	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 8 AEC 244 (1974)	2.8.1.2 2.8.1.3 3.1.4.1 3.1.4.2 3.6 5.15.2 5.7 5.7.1 5.8.2 6.16.3

ALAB-225	DETROIT EDISON CO. (GREENWOOD ENERGY CENTER, UNITS 2 AND 3), 8 AEC 379 (1974)	2.8.1.1 3.1.4.1
ALAB-226	COMMONWEALTH EDISON CO. (ZION STATION, UNITS 1 AND 2), 8 AEC 381 (1974)	2.8.1.3 2.9.3.2 2.9.5.10 2.9.9.1 3.1.4.1 3.12.1.1 3.7.2 5.10.1 5.13.1.1 6.16.1.2
ALAB-227	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 8 AEC 416 (1974)	3.14.3 4.4.2
ALAB-229	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 8 AEC 425 (1974)	2.9.1 3.16.1 6.16.2
ALAB-231	BOSTON EDISON CO. (PILGRIM NUCLEAR STATION, UNIT 1), 8 AEC 633 (1974)	4.6 5.8.6
ALAB-235	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 8 AEC 645 (1974)	4.3.1 6.14.2.1
ALAB-237	TENNESSEE VALLEY AUTHORITY (BELLEFONTE NUCLEAR PLANT, UNITS 1 AND 2), 8 AEC 654 (1974)	5.2
ALAB-238	BOSTON EDISON CO. (PILGRIM NUCLEAR STATION, UNIT 2), 8 AEC 656 (1974)	2.9.3.3.3

ALAB-242	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 8 AEC 847 (1974)	3.6 4.6 5.9
ALAB-243	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 2), 8 AEC 850 (1974)	2.9.1
ALAB-244	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 8 AEC 857 (1974)	2.9.11 2.9.9.2.1 2.9.9.3 2.9.9.4 3.11.3 3.13.1 4.2.1 4.2.2 5.13.3 .5 5.5.2
ALAB-245	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 8 AEC 873 (1974)	6.1.4.2
ALAB-247	DETROIT EDISON CO. (GREENWOOD ENERGY CENTER, UNITS 2 AND 3), 8 AEC 936 (1974)	6.15 6.15.8.2
ALAB-249	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 8 AEC 980 (1974)	3.13.3 3.3.1.2 4.4.2
ALAB-251	PUBLIC SERVICE ELECTRIC AND GAS CO. (HOPE CREEK GENERATING STATION, UNITS 1 AND 2), 8 AEC 993 (1974)	5.2
ALAB-252	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 8 AEC 1175 (1974)	2.9.9.2.1 3.13.1 5.1 5.5

ALAB-254	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNIT 2), 8 AEC 1184 (1975)	3.16 3.8.1 4.3 5.6.3
ALAB-256	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 1 NRC 10 (1975)	2.9.1 3.16 3.7 3.8 4.3
ALAB-258	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 1 NRC 45 (1975)	4.6
ALAB-260	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 1 NRC 51 (1975)	5.6.3
ALAB-262	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 1 NRC 163 (1975)	2.9.9.1 6.15.3 6.20.4
ALAB-264	NIAGARA MOHAWK POWER CORP. (NINE MILE POINT NUCLEAR STATION, UNIT 2), 1 NRC 347 (1975)	3.16 3.7.3.2 4.4.2 5.2 5.6.3 6.15.3
ALAB-265	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECTS 1 AND 4), 1 NRC 374 (1975)	4.6 5.9
ALAB-268	SOUTHERN CALIFORNIA EDISON CO. (SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), 1 NRC 383 (1975)	3.4.3 3.7.3.1 5.6.4 6.16.1

ALAB-268	SOUTHERN CALIFORNIA EDISON CO.	6.16.3
ALAB-269	BOSTON EDISON CO. (PILGRIM NUCLEAR STATION, UNIT 2), 1 NRC 411 (1975)	2.9.7 5.4 5.8.1
ALAB-270	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 1 NRC 473 (1975)	5.10.1 5.10.3 5.13.2
ALAB-271	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 1 NRC 478 (1975)	3.15 5.12.2.1
ALAB-273	PORTLAND GENERAL ELECTRIC CO. (PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2), 1 NRC 492 (1975)	2.9.7 5.8.1
ALAB-274	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 1 NRC 497 (1975)	5.13.1.1
ALAB-277	POTOMAC ELECTRIC POWER CO. (DOUGLAS POINT NUCLEAR GENERATING STATION, UNITS 1 AND 2), 1 NRC 539 (1975)	3.3.1 3.3.1.1 3.3.1.2 3.3.2.1 3.4.4
ALAB-279	KANSAS GAS AND ELECTRIC CO. (WOLF CREEK NUCLEAR GENERATING STATION), 1 NRC 559 (1975)	2.9.3.1 2.9.4.1.1
ALAB-280	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 2 NRC 3 (1975)	4.2.2 5.13.3 5.5.2

ALAB-281	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 3), 2 NRC 6 (1975)	5.12.1 5.13.1.2 5.4
ALAB-282	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 2 NRC 9 (1975)	5.2
ALAB-283	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 2 NRC 11 (1975)	6.24.5
ALAB-284	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 2 NRC 197 (1975)	3.14.1
ALAB-286	PUERTO RICO WATER RESOURCES AUTHORITY (NORTH COAST NUCLEAR PLANT, UNIT 1), 2 NRC 213 (1975)	2.9.7 5.8.1
ALAB-288	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 2 NRC 390 (1975)	3.6
ALAB-289	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 2 NRC 395 (1975)	2.9.3.3.3
ALAB-290	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION), 2 NRC 401 (1975)	6.11
ALAB-291	GEORGIA POWER CO. (ALVIN W. VOGTLE NUCLEAR PLANT, UNITS 1 AND 2), 2 NRC 404 (1975)	4.4.2 4.4.3 6.1.4.4 6.15 6.5.4.1 6.9.2.1
ALAB-292	LONG ISLAND LIGHTING CO. (JAMESPORT NUCLEAR STATION, UNITS 1 AND 2), 2 NRC 631 (1975)	2.5.3

ALAB-292	LONG ISLAND LIGHTING CO.	2.9.3.3.3 2.9.4.1.1 2.9.4.1.4
ALAB-293	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 2 NRC 660 (1975)	3.3.1 3.3.4 5.8.2
ALAB-294	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 2 NRC 663 (1975)	5.2
ALAB-295	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 2 NRC 668 (1975)	3.3.1 3.3.4 5.8.2
ALAB-296	ALLIED-GENERAL NUCLEAR SERVICES (BARNWELL NUCLEAR FUEL PLANT SEPARATION FACILITY), 2 NRC 671 (1975)	3.3.1 3.3.1.2 5.7.1 6.15.3
ALAB-297	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1), 2 NRC 727 (1975)	3.15 5.12.2.1
ALAB-298	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 2 NRC 730 (1975)	3.1.2.5
ALAB-300	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION), 2 NRC 752 (1975)	5.12.2.1 5.4 6.11
ALAB-301	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNITS 1 AND 2), 2 NRC 853 (1975)	5.4 5.8.10

ALAB-302	DUKE POWER CO. (PERKINS NUCLEAR STATION UNITS 1, 2, 3), 2 NRC 856 (1975)	2.9.7 5.8.1
ALAB-303	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLFAR-1), 2 NRC 858 (1975)	2.11.6 3.16 5.6.3 5.8.3.2
ALAB-304	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT NUCLEAR STATION, UNITS 1, 2 AND 3), 3 NRC 1 (1976)	2.9.4.1.4 5.2 6.16.1
ALAB-305	CINCINNATI GAS AND ELECTRIC CO. (WILLIAM H. ZIMMER NUCLEAR STATION), 3 NRC 8 (1976)	2.9.5.1 4.3
ALAB-307	KANSAS GAS AND ELECTRIC CO. (WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), 3 NRC 17 (1976)	5.7.1
ALAB-310	DUQUESNE LIGHT CO. (BEAVER VALLEY POWER STATION, UNIT 1), 3 NRC 33 (1976)	5.4
ALAB-311	KANSAS GAS AND ELECTRIC CO. (WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), 3 NRC 85 (1976)	2.11.6 5.2 5.4
ALAB-313	PUERTO RICO WATER RESOURCES AUTHORITY (NORTH COAST NUCLEAR PLANT, UNIT 1), 3 NRC 94 (1976)	2.7 6.5.2
ALAB-314	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1), 3 NRC 98 (1976)	5.12.2.1

ALAB-315	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 3 NRC 101 (1976)	6.24.5
ALAB-316	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 3 NRC 167 (1976)	2.5.1 3.1.2.1 3.4
ALAB-317	GULF STATES UTILITIES CO. (RIVER BEND STATION, UNITS 1 AND 2), 3 NRC 175 (1976)	3.7.3.4 5.2
ALAB-318	LONG ISLAND LIGHTING CO. (JAMESPORT NUCLEAR POWER STATION, UNITS 1 AND 2), 3 NRC 186 (1976)	5.12.2.1
ALAB-319	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNITS 1, 2, AND 3), 3 NRC 188 (1976)	3.1.2.3 3.4.2 6.16.1.3
ALAB-321	KANSAS GAS AND ELECTRIC CO. (WOLF CREEK NUCLEAR GENERATING STATION), 3 NRC 293 (1976)	3.1.2.1 3.1.2.2 6.19 6.19.1
ALAB-322	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 3 NRC 328 (1976)	2.9.4 2.9.4.1.2
ALAB-323	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1), 3 NRC 331 (1976)	6.3
ALAB-324	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 3 NRC 347 (1976)	1.5.2
ALAB-326	PROJECT MANAGEMENT CORP. (CLINCH RIVER BREEDER REACTOR PLANT), 3 NRC 406 (1976)	5.12.2.1

ALAB-327 KANSAS GAS AND ELECTRIC CO.
(WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), 3 NRC 408 (1976)

2.11.2.4
2.11.2.5
4.3
5.12.2.1
6.23.3.1

ALAB-328 ALLIED-GENERAL NUCLEAR SERVICES
(BARNWELL FUEL RECEIVING AND STORAGE STATION), 3 NRC 420 (1976)

2.9.4.1.2

ALAB-329 GULF STATES UTILITIES CO.
(RIVER BEND STATION, UNITS 1 AND 2), 3 NRC 607 (1976)

2.9.7
2.9.7.1
5.8.1

ALAB-330 PROJECT MANAGEMENT CORP.
(CLINCH RIVER BREEDER REACTOR PLANT), 3 NRC 613 (1976)

5.12.2.1

ALAB-331 KANSAS GAS AND ELECTRIC CO.
(WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), 3 NRC 771 (1976)

5.4
5.8.10
5.8.9

ALAB-332 TOLEDO EDISON CO.
(DAVIS-BESSE NUCLEAR POWER STATION), 3 NRC 785 (1976)

6.4.1.1
6.4.2
6.4.2.1
6.4.2.2
6.4.2.3

ALAB-333 PORTLAND GENERAL ELECTRIC CO.
(PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2), 3 NRC 804 (1976)

2.9.4
2.9.4.1.1

ALAB-334 PACIFIC GAS AND ELECTRIC CO.
(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 3 NRC 809 (1976)

2.7
3.11.1.2
6.5.2

ALAB-336	ARIZONA PUBLIC SERVICE CO. (PALO VERDE NUCLEAR GENERATING STATION, UNITS 1, 2 AND 3), 4 NRC 3 (1976)	4.3
ALAB-338	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 4 NRC 10 (1976)	5.7 5.7.1
ALAB-339	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 4 NRC 20 (1976)	2.9.3.3.3 2.9.7.1 5.12.2 5.5.3 5.8.4.1
ALAB-340	ILLINOIS POWER CO. (CLINTON POWER STATION, UNITS 1 AND 2), 4 NRC 27 (1976)	2.11.1 2.11.2.2 2.11.2.3 3.11.1.3 3.13.1 5.10.3.1
ALAB-341	TENNESSEE VALLEY AUTHORITY (BROWNS FERRY NUCLEAR PLANT, UNITS 1 AND 2), 4 NRC 95 (1976)	2.9.3.3.2 2.9.3.3.3
ALAB-342	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 4 NRC 98 (1976)	2.9.3.3.3 2.9.3.3.4 2.9.4 2.9.4.1.1 2.9.7.1 5.5.3
ALAB-343	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING STATION, UNITS 1 AND 2), 4 NRC 169 (1976)	5.15
ALAB-344	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 4 NRC 207 (1976)	5.8.2

ALAB-345	USERDA (CLINCH RIVER BREEDER RE PLANT), 4 NRC 212 (1977)	5.1 5.8.1
ALAB-347	UNION ELECTRIC CO. (CALLAWAY PLANT, UNITS 1 AND 2), 4 NRC 216 (1976)	3.7.3.4
ALAB-348	UNION ELECTRIC CO. (CALLAWAY PLANT, UNITS 1 AND 2), 4 NRC 225 (1976)	3.7.3.3 5.6.4
ALAB-349	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 4 NRC 235 (1976)	3.17 3.7.3.3 5.18 5.4
ALAB-350	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 4 NRC 365 (1976)	5.18
ALAB-352	UNION ELECTRIC CO. (CALLAWAY PLANT, UNITS 1 AND 2), 4 NRC 371 (1976)	6.20.4
ALAB-353	LONG ISLAND LIGHTING CO. (JAMESPORT NUCLEAR STATION, UNITS 1 AND 2), 4 NRC 381 (1976)	5.12.2.1
ALAB-354	USERDA (CLINCH RIVER BREEDER REACTOR PLANT), 4 NRC 383 (1976)	2.10.2 2.9.3.3.3 2.9.5.1 2.9.7.1 2.9.9.2.1 5.2
ALAB-355	DUKE POWER CO. (CATAWBA NUCLEAR STATION UNITS 1 AND 2), 4 NRC 397 (1976)	3.11.1.1.1 5.10.3 5.6.3 6.16.3

ALAB-355	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 3 NRC 830 (1976)	3.11.4 4.4 5.10.1 5.10.3 5.5.1 6.19.2.1
ALAB-356	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 4 NRC 525 (1976)	5.6.1 5.7
ALAB-357	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNITS 1, 2 AND 3), 4 NRC 542 (1976)	6.1.5
ALAB-358	GULF STATES UTILITIES CO. (RIVER BEND STATION, UNITS 1 AND 2), 4 NRC 558 (1976)	2.9.4.1.4 3.6
ALAB-359	DUKE POWER CO. (CATAWBA NUCLEAR STATION UNITS 1 AND 2), 4 NRC 619 (1976)	4.4.1 4.4.2 5.10.1
ALAB-366	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 5 NRC 39 (1977)	6.15.3.1
ALAB-367	TENNESSEE VALLEY AUTHORITY (HARTSVILLE NUCLEAR PLANT UNITS 1A,2A,1B,2B), 5 NRC 92 (1977)	3.11 3.11.1.1.1 3.13.1 5.10.1 5.10.3 5.6.3
ALAB-369	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 2), 5 NRC 129 (1977)	5.2
ALAB-370	PUBLIC SERVICE CO. OF OKLAHOMA (BLACK FOX STATION, UNITS 1 AND 2), 5 NRC 131 (1977)	.5

ALAB-370	PUBLIC SERVICE CO. OF OKLAHOMA	5.8.3.2 5.8.4
ALAB-371	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 5 NRC 409 (1977)	3.3.1 5.12.2.1
ALAB-374	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 5 NRC 417 (1977)	4.6 5.12.2.1.2
ALAB-376	DETROIT EDISON CO. (GREENWOOD ENERGY CENTER, UNITS 2 AND 3), 5 NRC 426 (1977)	2.9.4.1.1 2.9.7 3.1.2.4 5.4 5.8.1
ALAB-377	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNITS 1, 2, AND 3), 5 NRC 430 (1977)	2.6 3.3.3
ALAB-378	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1, 2, 3), 5 NRC 557 (1977)	3.17 6.4.2.2
ALAB-379	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 5 NRC 565 (1977)	3.12 3.12.2
ALAB-380	TENNESSEE VALLEY AUTHORITY (HARTSVILLE NUCLEAR PLANT UNITS 1A, 2A, 1B, 2B), 5 NRC 572 (1977)	3.1.2.3 6.15.8.1 6.19.2 6.9.1
ALAB-381	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 5 NRC 582 (1977)	3.1.2.1.1 3.1.2.5

ALAB-381	HOUSTON LIGHTING AND POWER CO.	4.4 6.16.1 6.3.1
ALAB-382	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 5 NRC 603 (1977)	2.9.10.2 3.12.3
ALAB-383	GULF STATES UTILITIES CO. (RIVER BEND STATION, UNITS 1 AND 2), 5 NRC 609 (1977)	5.6.1
ALAB-384	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 2), 5 NRC 612 (1977)	2.9.3.3.3
ALAB-385	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3), 5 NRC 621 (1977)	5.6.3 5.7 5.7.1 6.3
ALAB-388	PUBLIC SERVICE CO. OF OKLAHOMA (BLACK FOX STATION, UNITS 1 AND 2), 5 NRC 640 (1977)	5.10.3
ALAB-389	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 5 NRC 727 (1977)	3.1.2.1.1 5.19.1
ALAB-390	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 5 NRC 733 (1977)	6.20.5
ALAB-392	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 5 NRC 759 (1977)	6.15.6
ALAB-393	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 5 NRC 767 (1977)	5.12.2.1

ALAB-394	PUBLIC SERVICE ELECTRIC AND GAS CO. (HOPE CREEK GENERATING STATION, UNITS 1 AND 2), 5 NRC 769 (1977)	5.10.3
ALAB-395	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 5 NRC 772 (1977)	5.15.2 5.18 5.19.3 5.6.2 5.7 5.7.1 6.15.3.2
ALAB-399	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 2), 5 NRC 1156 (1977)	6.15.8.1
ALAB-400	PACIFIC GAS AND ELECTRIC CO. (STANISLAUS NUCLEAR PROJECT, UNIT 1), 5 NRC 1175 (1977)	2.9.3 3.1.2.2 3.5.2.1 5.8.5
ALAB-404	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 5 NRC 1185 (1977)	5.7.1
ALAB-405	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 5 NRC 1190 (1977)	3.15 5.12.2.1
ALAB-408	DUQUESNE LIGHT CO. (BEAVER VALLEY POWER STATION, UNIT 1), 5 NRC 1383 (1977)	3.1.2.5 4.6 6.16.1
ALAB-409	TENNESSEE VALLEY AUTHORITY (HARTSVILLE NUCLEAR PLANT UNITS 1A,2A,1B,2B), 5 NRC 1391 (1977)	5.13.4
ALAB-410	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 5 NRC 1398 (1977)	2.11.2.4 3.12.4

ALAB-410	PACIFIC GAS AND ELECTRIC CO.	6.20.4
ALAB-413	TENNESSEE VALLEY AUTHORITY (WATTS BAR NUCLEAR PLANT, UNITS 1 AND 2), 5 NRC 1418 (1977)	2.9.4.1.1 2.9.4.1.2 2.9.4.1.4 2.9.4.2
ALAB-414	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 2), 5 NRC 1425 (1977)	5.15 5.7
ALAB-415	FLORIDA POWER AND LIGHT CO. 5 NRC 1435 (1977)	5.7.1
ALAB-417	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 5 NRC 1442 (1977)	5.4 6.14.3 6.4.1.1
ALAB-418	TENNESSEE VALLEY AUTHORITY (HARTSVILLE NUCLEAR PLANT UNITS 1A,2A,1B,2B), 6 NRC 1 (1977)	4.5 5.12.1
ALAB-419	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 6 NRC 3 (1977)	3.15 3.4 5.12.2.1.1
ALAB-420	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 6 NRC 8 (1977)	2.9.3.3.3 2.9.3.3.4 5.5.3 6.3
ALAB-421	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 6 NRC 25 (1977)	5.14

ALAB-422 PUBLIC SERVICE CO. OF NEW HAMPSHIRE
(SEABROOK STATION, UNITS 1 AND 2), 6 NRC 33 (1977)

3.1.1
3.1.4.3
3.1.5
3.12.1
3.13.1
3.16
3.16.1
4.2
4.3
4.4
5.6.1
5.6.3
6.1.4
6.15
6.15.4.1
6.15.4.2
6.15.5
6.15.8.2

ALAB-423 PUBLIC SERVICE CO. OF NEW HAMPSHIRE
(SEABROOK STATION, UNITS 1 AND 2), 6 NRC 115 (1977)

4.3
5.6.5

ALAB-424 KANSAS GAS AND ELECTRIC CO.
(WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), 6 NRC 122 (1977)

2.9.4.1.1
5.10.2
5.10.3
5.13.4
5.4

ALAB-428 FLORIDA POWER AND LIGHT CO.
(ST. LUCIE PLANT, UNIT 1; TURKEY POINT PLANT, UNITS 3 AND 4), 6 NRC 221 (1977)

6.3
6.3.1

ALAB-430 TOLEDO EDISON CO. AND CLEVELAND ELECTRIC ILLUMINATING CO.
(DAVIS-BESSE STATION, UNITS 1, 2, 3; PERRY PLANT, UNITS 1, 2), 6 NRC 457 (1977)

4.4
5.10.3

ALAB-431 DUKE POWER CO.
(PERKINS NUCLEAR STATION UNITS 1, 2, 3), 6 NRC 460 (1977)

2.9.3.3.3

ALAB-432	SOUTHERN CALIFORNIA EDISON CO. AND SAN DIEGO GAS AND ELECTRIC CO. (SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), 6 NRC 465 (1977)	5.6.1
ALAB-433	DUKE POWER CO. (PERKINS NUCLEAR STATION UNITS 1, 2, 3), 6 NRC 469 (1977)	5.12.2 5.2
ALAB-434	POWER AUTHORITY OF THE STATE OF NEW YORK (GREENE COUNTY NUCLEAR PLANT), 6 NRC 471 (1977)	2.9.7
ALAB-435	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 6 NRC 541 (1977)	5.10.1 6.15.4 6.15.4.1 6.23.3.1
ALAB-437	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 6 NRC 630 (1977)	5.7.1
ALAB-438	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 6 NRC 638 (1977)	2.11.6 5.12.2.1
ALAB-439	POWER AUTHORITY OF THE STATE OF NEW YORK (GREENE COUNTY NUCLEAR PLANT), 6 NRC 640 (1977)	5.12.2.1
ALAB-440	DUKE POWER CO. (CHEROKEE NUCLEAR STATION, UNITS 1, 2 AND 3), 6 NRC 642 (1977)	2.9.2 2.9.3.3.3
ALAB-441	PITTSBURGH-DES MOINES STEEL CO. 6 NRC 725 (1977)	5.12.2 5.8.12
ALAB-443	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 6 NRC 741 (1977)	3.1.2.1 3.1.2.6 3.14.2

ALAB-443 CLEVELAND ELECTRIC ILLUMINATING CO.

3.5.2.3
3.5.3
5.6.4

ALAB-444 GULF STATES UTILITIES CO.
(RIVER BEND STATION, UNITS 1 AND 2), 6 NRC 760 (1977)

2.10.2
2.9.3.3.3
2.9.5.7
3.1.2.5
3.12.1.2
3.4.2
3.7.3.4
6.16.2
6.20.3
6.9.2.1

ALAB-445 TENNESSEE VALLEY AUTHORITY
(YELLOW CREEK NUCLEAR PLANT UNITS 1 AND 2), 6 NRC 865 (1977)

1.7.1
2.5.3

ALAB-446 PUGET SOUND POWER AND LIGHT CO.
(SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), 6 NRC 870 (1977)

6.19.1

ALAB-447 EXXON NUCLEAR CO.
(NUCLEAR FUEL RECOVERY AND RECYCLING CENTER), 6 NRC 873 (1977)

2.10.2

ALAB-451 PORTLAND GENERAL ELECTRIC CO.
(TROJAN NUCLEAR PLANT), 6 NRC 889 (1977)

3.1.2.5
6.1.6
6.16.1

ALAB-453 CONSOLIDATED EDISON CO. OF N.Y.
(INDIAN POINT STATION, UNIT 2), 7 NRC 31 (1978)

6.15.8.1

ALAB-454 METROPOLITAN EDISON CO.
(THREE MILE ISLAND NUCLEAR STATION, UNIT 2), 7 NRC 39 (1978)

2.10.1.2
2.10.2
5.2

ALAB-455	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 7 NRC 41 (1978)	3.16 5.6.1 6.1 6.1.3.1 6.15.1 6.15.9 6.20.2
ALAB-456	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 2), 7 NRC 63 (1978)	2.9.5.6 6.20.4
ALAB-457	DUKE POWER CO. (CHEROKEE NUCLEAR STATION, UNITS 1, 2 AND 3), 7 NRC 70 (1978)	6.14.1
ALAB-458	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 7 NRC 155 (1978)	4.3 5.15.3 5.7.1 5.7.2 6.15.4.2
ALAB-459	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 7 NRC 179 (1978)	1.1 3.11.1.4 3.3.2.4 3.3.4 5.13 5.6.1 6.15.3
ALAB-460	PUBLIC SERVICE ELECTRIC AND GAS CO. (HOPE CREEK GENERATING STATION, UNITS 1 AND 2), 7 NRC 204 (1978)	4.3
ALAB-461	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 7 NRC 313 (1978)	3.1.2.5 3.1.2.7 3.13.1 5.10.1 5.4 5.5 5.8.7 6.16.1.3

ALAB-462 KANSAS GAS AND ELECTRIC CO.
(WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), 7 NRC 320 (1978)

3.14.3
3.7.3.2
3.7.3.4
3.7.3.5.1
4.4.1
4.4.2

ALAB-463 TENNESSEE VALLEY AUTHORITY
(HARTSVILLE NUCLEAR PLANT UNITS 1A,2A,1B,2B), 7 NRC 341 (1978)

3.1.2.7
3.11.4
3.13.1
3.14.3
3.16
3.7.2
4.3
4.4
5.5.1
6.7.1
6.7.2

ALAB-464 NORTHERN STATES POWER CO.
(TYRONE ENERGY PARK, UNIT 1), 7 NRC 372 (1978)

3.1.2.6
4.4.1.1

ALAB-466 DETROIT EDISON CO.
(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), 7 NRC 457 (1978)

5.6.1
5.8.14
6.24.3

ALAB-467 TENNESSEE VALLEY AUTHORITY
(HARTSVILLE NUCLEAR PLANT UNITS 1A,2A,1B,2B), 7 NRC 459 (1978)

4.5
5.1
5.4
5.5
5.6.1
5.8.15

ALAB-468 CONSUMERS POWER CO.
(MIDLAND PLANT, UNITS 1 AND 2), 7 NRC 464 (1978)

3.3.4
5.8.2

ALAB-469 DETROIT EDISON CO.
(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), 7 NRC 470 (1978)

5.9
6.14

ALAB-470 DETROIT EDISON CO.
(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), 7 NRC 473 (1978)

2.9.4.1.1
2.9.4.1.2
2.9.4.1.4
2.9.4.2
2.9.5.3
3.1.2.5
6.16.1

ALAB-471 PUBLIC SERVICE CO. OF NEW HAMPSHIRE
(SEABROOK STATION, UNITS 1 AND 2), 7 NRC 477 (1978)

3.11.1.5
3.16
3.7.2
3.7.3.6
6.15.4
6.15.4.1
6.15.4.2
6.15.6.1.2

ALAB-472 DETROIT EDISON CO.
(GREENWOOD ENERGY CENTER, UNITS 2 AND 3), 7 NRC 570 (1978)

2.9.7
5.4
5.8.1

ALAB-473 NUCLEAR ENGINEERING CO.
(SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), 7 NRC 737 (1978)

2.9.4.1.1
2.9.4.1.4
2.9.4.2
2.9.5.3
2.9.7
5.8.1

ALAB-474 METROPOLITAN EDISON CO.
(THREE MILE ISLAND NUCLEAR STATION, UNIT 2), 7 NRC 746 (1978)

2.9.2

ALAB-476 DETROIT EDISON CO.
(GREENWOOD ENERGY CENTER, UNITS 2 AND 3), 7 NRC 759 (1978)

2.9.3.3.3

ALAB-477	KANSAS GAS AND ELECTRIC CO. (WOLF CREEK NUCLEAR GENERATING STATION, UNIT 1), 7 NRC 766 (1978)	4.5
ALAB-479	BOSTON EDISON CO. (PILGRIM NUCLEAR STATION, UNIT 2), UNIT 2), 7 NRC 774 (1978)	3.7 6.16.1
ALAB-481	LONG ISLAND LIGHTING CO. (JAMESPORT NUCLEAR STATION, UNITS 1 AND 2), 7 NRC 807 (1978)	5.7.1
ALAB-482	DUKE POWER CO. (CHEROKEE NUCLEAR STATION, UNITS 1, 2 AND 3), 7 NRC 979 (1978)	5.1 5.5 6.18
ALAB-485	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECTS 3 AND 5), 7 NRC 986 (1978)	5.6.3 6.18
ALAB-486	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 2), 8 NRC 9 (1978)	4.4.2 5.5.1
ALAB-488	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 8 NRC 187 (1978)	2.6 2.9.9.5 2.9.9.6 3.6 6.17.1
ALAB-489	OFFSHORE POWER SYSTEMS (FLOATING NUCLEAR POWER PLANTS), 8 NRC 194 (1978)	1.8 3.1.2.5 3.3.1 6.15.7 6.16.1 6.16.1.1 6.18 6.20.4

ALAB-490	CAROLINA POWER AND LIGHT CO. (SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 8 NRC 234 (1978)	3.7.3.2 6.15.5
ALAB-491	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 8 NRC 245 (1978)	5.5.1 5.6.1 6.9.2.2
ALAB-492	NORTHERN STATES POWER CO. (TYRONE ENERGY PARK, UNIT 1), 8 NRC 251 (1978)	2.9.5.13 5.8.1
ALAB-493	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 8 NRC 253 (1978)	2.7 3.1.2.6 3.6 4.5 5.12.1 5.15.1 5.18 5.19.4 5.7.1 6.18 6.5.1 6.5.2
ALAB-494	NUCLEAR ENGINEERING CO. (SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), 8 NRC 299 (1978)	3.1.4.1 3.1.4.2
ALAB-495	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 8 NRC 304 (1978)	6.15.4
ALAB-496	PORTLAND GENERAL ELECTRIC CO. (TROJAN NUCLEAR PLANT), 8 NRC 308 (1978)	2.9.9.2.2 5.8.4.1
ALAB-497	DAIRYLAND POWER COOPERATIVE (LA CROSSE BOILING WATER REACTOR), 8 NRC 312 (1978)	3.1.4.1

ALAB-499	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 8 NRC 319 (1978)	6.15.4
ALAB-500	OFFSHORE POWER SYSTEMS (FLOATING NUCLEAR POWER PLANTS), 8 NRC 323 (1978)	5.14
ALAB-501	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECTS 3 AND 5), 8 NRC 381 (1978)	5.15 5.6.1
ALAB-502	ROCHESTER GAS AND ELECTRIC CORP. (STERLING POWER PROJECT, UNIT 1), 8 NRC 383 (1978)	3.7.3.2 5.1 6.15.4.1 6.15.4.2
ALAB-504	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 8 NRC 406 (1978)	3.16 5.12.2 5.12.2.1
ALAB-505	PUBLIC SERVICE CO. OF OKLAHOMA (BLACK FOX STATION, UNITS 1 AND 2), 8 NRC 527 (1978)	5.7.1 6.4.1
ALAB-506	TENNESSEE VALLEY AUTHORITY (PHIPPS BEND NUCLEAR PLANT, UNITS 1 AND 2), 8 NRC 533 (1978)	6.15
ALAB-507	ROCHESTER GAS AND ELECTRIC CORP. (STERLING POWER PROJECT, UNIT 1), 8 NRC 551 (1978)	6.13
ALAB-513	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 8 NRC 694 (1978)	3.1.2.1 5.6.1
ALAB-514	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 8 NRC 697 (1978)	5.12.2.1

ALAB-515	TENNESSEE VALLEY AUTHORITY (YELLOW CREEK NUCLEAR PLANT, UNITS 1 AND 2), 8 NRC 702 (1978)	6.15.8.5
ALAB-516	DELMARVA POWER AND LIGHT CO. (SUMMIT POWER STATION, UNITS 1 AND 2), 9 NRC 5 (1979)	1.3 6.2
ALAB-518	PUBLIC SERVICE ELECTRIC AND GAS CO. (HOPE CREEK GENERATING STATION, UNITS 1 AND 2), 9 NRC 14 (1979)	4.3 6.15.1.2 6.16.4
ALAB-519	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 9 NRC 42 (1979)	2.11.5.1
ALAB-520	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 9 NRC 48 (1979)	3.11.1.1 3.11.1.6
ALAB-522	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 9 NRC 54 (1979)	2.9.4.1.1 2.9.7.1
ALAB-523	PUGET SOUND POWER AND LIGHT CO. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), 9 NRC 58 (1979)	2.9.3.3.3 2.9.3.3.4
ALAB-524	PORTLAND GENERAL ELECTRIC CO. (TROJAN NUCLEAR PLANT), 9 NRC 65 (1979)	5.7.1
ALAB-525	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 2), 9 NRC 111 (1979)	3.14.1
ALAB-526	CAROLINA POWER AND LIGHT CO. (SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 9 NRC 122 (1979)	2.9.12 2.9.3.3.3 5.19.1

ALAB-528	DUKE POWER CO. (OCONEE NUCLEAR STATION AND MCGUIRE NUCLEAR STATION)), 9 NRC 146, (1979)	2.9.3.3.3 2.9.4.1.2 2.9.4.2 2.9.6
ALAB-530	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 9 NRC 261 (1979)	4.4
ALAB-531	PORTLAND GENERAL ELECTRIC CO. (TROJAN NUCLEAR PLANT), 9 NRC 263 (1979)	6.15 6.15.4 6.15.9 6.27
ALAB-532	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC POWER STATION, UNIT 3), 9 NRC 279 (1979)	4.1 6.15.8.5
ALAB-534	PORTLAND GENERAL ELECTRIC CO. (TROJAN NUCLEAR PLANT), 9 NRC 287 (1979)	2.5.1 3.4 6.1.3.1 6.1.4.4
ALAB-535	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 9 NRC 377 (1979)	2.9.7 3.4.4
ALAB-539	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 9 NRC 422 (1979)	3.4.4
ALAB-540	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 9 NRC 428 (1979)	5.5.4
ALAB-541	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 9 NRC 436 (1979)	5.12.2.1 5.8.2

ALAB-542	IN RE ATLANTIC RESEARCH CORP. 9 NRC 611 (1979)	6.10.1.1
ALAB-544	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 9 NRC 630 (1979)	5.12.1
ALAB-546	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 9 NRC 636 (1979)	5.5.4
ALAB-547	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 9 NRC 638 (1979)	5.4
ALAB-548	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 9 NRC 640 (1979)	5.15.2
ALAB-549	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 9 NRC 644 (1979)	2.9.3.3.3 2.9.4.1.2 2.9.5.1
ALAB-550	PACIFIC GAS AND ELECTRIC CO. (STANISLAUS NUCLEAR PROJECT, UNIT 1), 9 NRC 683 (1979)	2.11.2 2.11.5 2.11.6
ALAB-551	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 9 NRC 704 (1979)	4.6 5.19.1 5.5.1 5.6.1 6.5.4.1
ALAB-552	PUGET SOUND POWER AND LIGHT CO. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), 10 NRC 1 (1979)	2.9.3.3.3
ALAP-553	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 10 NRC 12 (1979)	3.3.2.4

ALAB-554	TENNESSEE VALLEY AUTHORITY (HARTSVILLE NUCLEAR PLANT UNITS 1A,2A,1B,2B), 10 NRC 15 (1979)	3.5
ALAB-555	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 10 NRC 23 (1979)	3.12.4 3.16
ALAB-556	PUGET SOUND POWER AND LIGHT CO. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), 10 NRC 30 (1979)	3.1.4.1 3.1.4.2 5.2
ALAB-557	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 10 NRC 153 (1979)	6.15.4
ALAB-559	PUGET SOUND POWER AND LIGHT CO. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), 10 NRC 162 (1979)	2.9.3.3.3
ALAB-560	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3), 10 NRC 265 (1979)	6.3
ALAB-562	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 10 NRC 437 (1979)	6.15.1.2 6.15.8.1
ALAB-565	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 10 NRC 521 (1979)	2.9.5 2.9.5.3 3.4.1 6.14
ALAB-566	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 10 NRC 527 (1979)	3.3.5.2 3.7.1 6.9.1

ALAB-567 IN THE MATTER OF RADIATION TECHNOLOGY, INC.
10 NRC 533 (1979)

5.2
6.10
6.10.1

ALAB-568 VIRGINIA ELECTRIC AND POWER CO.
(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 10 NRC 554 (1979)

5.10.2

ALAB-569 CAROLINA POWER AND LIGHT CO.
(H. B. ROBINSON, UNIT 2), 10 NRC 557 (1979)

6.15.6.1
6.15.8.5

ALAB-571 WASHINGTON PUBLIC POWER SUPPLY SYSTEM
(WPPSS NUCLEAR PROJECT 2), 10 NRC 687 (1979)

4.6
5.6.1
5.8.1

ALAB-572 PUGET SOUND POWER AND LIGHT CO.
(SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), 10 NRC 693 (1979)

3.15

ALAB-573 PUBLIC SERVICE CO. OF OKLAHOMA
(BLACK FOX STATION, UNITS 1 AND 2), 10 NRC 775 (1979)

3.5
5.1
5.10.3
6.15.3

ALAB-574 HOUSTON LIGHTING AND POWER CO.
(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 11 NRC 7 (1980)

1.7.1
2.5.2
2.5.3
2.9.3.1
2.9.3.3.1
2.9.5
3.1.2.4

ALAB-575 HOUSTON LIGHTING AND POWER CO.
(SOUTH TEXAS PROJECT, UNITS 1 AND 2), 11 NRC 14 (1980)

3.17

ALAB-577 CAROLINA POWER AND LIGHT CO.
(SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 11 NRC 18 (1980)

3.1.2.1.1

ALAB-577 CAROLINA POWER AND LIGHT CO.

3.16
3.3.1
3.3.1.1
3.4
3.7.3.7
4.3
5.19.1
5.2
5.5
5.6.1
6.16.1

ALAB-578 VIRGINIA ELECTRIC AND POWER CO.
(NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 11 NRC 189 (1980)

4.6
5.15

ALAB-579 FLORIDA POWER AND LIGHT CO.
(ST. LUCIE NUCLEAR PLANT, UNIT 2), 11 NRC 223 (1980)

4.4.1.1
5.12.1
6.24

ALAB-580 PACIFIC GAS AND ELECTRIC CO.
(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 11 NRC 227 (1980)

3.1.2.1
3.14.3
3.3.7
4.6
5.6.3

ALAB-581 CAROLINA POWER AND LIGHT CO.
(SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 11 NRC 233 (1980)

1.8
3.1.2.1.1
3.3.1
3.7.3.7
5.6.3

ALAB-582 HOUSTON LIGHTING AND POWER CO.
(ALLEN CREEK NUCLEAR GENERATING STATION, UNIT 1), 11 NRC 239 (1980)

2.9.3.3.3
2.9.4.1.4
5.10.3
5.5.1

ALAB-583 PACIFIC GAS AND ELECTRIC CO.
(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 11 NRC 447 (1980)

2.10.2

ALAB-583	PACIFIC GAS AND ELECTRIC CO.	5.2
ALAB-584	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 11 NRC 451 (1980)	3.1.1 3.3.2.4 3.5.2.3 3.5.4 3.5.5 5.5 5.8.2 6.15.4
ALAB-585	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNITS 1 AND 2), 11 NRC 469 (1980)	5.5
ALAB-586	HOUSTON LIGHTING AND POWER CO. (ALLEN CREEK NUCLEAR GENERATING STATION, UNIT 1), 11 NRC 472 (1980)	2.9.7 5.8.1
ALAB-588	PUBLIC SERVICE ELECTRIC AND GAS CO. (SALEM NUCLEAR GENERATING STATION, UNIT 1), 11 NRC 533 (1980)	5.12.2.1
ALAB-590	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 11 NRC 542 (1980)	2.9.3.1 2.9.5.3 3.5
ALAB-591	DUKE POWER CO. (PERKINS NUCLEAR STATION UNITS 1, 2, 3), 11 NRC 741 (1980)	3.1.2.1
ALAB-592	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 11 NRC 744 (1980)	5.6.6.1 6.4.1.1
ALAB-593	PENNSYLVANIA POWER AND LIGHT CO. AND ALLEGHENY ELECTRIC COOPERATIVE INC. (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), 11 NRC 761 (1980)	5.12.2

ALAB-594	IN RE ATLANTIC RESEARCH CORP. 11 NRC 841 (1980)	6.10.1.1
ALAB-595	CINCINNATI GAS AND ELECTRIC CO. (WILLIAM H. ZIMMER NUCLEAR STATION), 11 NRC 860 (1980)	2.9.3.3.3 2.9.7
ALAB-596	ROCHESTER GAS AND ELECTRIC CORP. (STERLING POWER PROJECT, UNIT 1), 11 NRC 867 (1980)	1.9
ALAB-597	DUKE POWER CO. (PERKINS NUCLEAR STATION UNITS 1, 2, 3), 11 NRC 870 (1980)	5.6.5 5.8.10
ALAB-598	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 11 NRC 876 (1980)	4.4.2
ALAB-600	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 12 NRC 3 (1980)	2.10.2 2.11.2.5
ALAB-601	COMMONWEALTH EDISON CO. (CARROL COUNTY SITE), 12 NRC 18 (1980)	6.6.1
ALAB-604	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 12 NRC 149 (1980)	3.12.1.2
ALAB-605	PUERTO RICO ELECTRIC POWER AUTHORITY (NORTH COAST NUCLEAR PLANT, UNIT 1), 12 NRC 153 (1980)	1.10
ALAB-606	NUCLEAR ENGINEERING CO. (SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), 12 NRC 156 (1980)	5.4 6.15.1.1
ALAB-607	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 12 NRC 165 (1980)	3.12.3

ALAB-611	NORTHERN STATES POWER CO. (MONTICELLO PLANT, UNIT 1), 12 NRC 301 (1980)	4.6
ALAB-613	PENNSYLVANIA POWER AND LIGHT CO. (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), 12 NRC 317 (1980)	2.11.2 2.11.2.8 2.11.3 2.11.4 2.11.6
ALAB-614	DAIRYLAND POWER COOPERATIVE (LA CROSSE BOILING WATER REACTOR), 12 NRC 347 (1980)	3.1.4.2
ALAB-616	COMMONWEALTH EDISON CO. (ZION STATION, UNITS 1 AND 2), 12 NRC 419 (1980)	2.5.1 3.1.2.1 3.4 5.13.2
ALAB-619	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 12 NRC 558 (1980)	2.5.1 2.9.4.1.4 3.1.2.1 3.4 3.4.5 6.24 6.24.1.1 6.24.1.2
ALAB-620	NORTHERN STATES POWER CO. (MONTICELLO PLANT, UNIT 1), 12 NRC 574 (1980)	3.4.3
ALAB-621	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 12 NRC 578 (1980)	3.15
ALAB-622	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 2 AND 3), 12 NRC 667 (1980)	3.18.1 3.18.2

ALAB-623	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 12 NRC 670 (1980)	6.26
ALAB-626	DUKE POWER CO. (WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2), 13 NRC 17 (1981)	4.3
ALAB-629	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 13 NRC 75 (1981)	3.5 3.5.2.3 3.5.5 6.15.1.2
ALAB-630	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 13 NRC 84 (1981)	3.1.4.1 3.15 5.12.2.1
ALAB-631	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 13 NRC 87 (1981)	5.2
ALAB-632	BOSTON EDISON CO. (PILGRIM NUCLEAR STATION, UNIT 2), 13 NRC 91 (1981)	4.3
ALAB-633	CINCINNATI GAS AND ELECTRIC CO. (WILLIAM H. ZIMMER NUCLEAR STATION), 13 NRC 94 (1981)	5.4
ALAB-634	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 13 NRC 96 (1981)	5.12.2.1
ALAB-635	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 13 NRC 309 (1981)	5.12.2 5.12.2.1
ALAB-636	CONSUMERS POWER CO. (BIG ROCK POINT PLANT), N/A), 13 NRC 312 (1981)	3.1.2.5 5.10.2.2 6.15.1.2 6.15.4

ALAB-636	CONSUMERS POWER CO.	6.15.9
ALAB-639	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 13 NRC 469 (1981)	2.11.2.4 5.12.2.1 5.8.3.2 6.23.3.1
ALAB-640	PHILA. ELEC. CO.; MET. EDISON CO.; PUB. SERVICE ELEC. AND GAS CO. (PEACH BOTTOM UNITS 2,3; ISLAND UNIT 2; HOPE CREEK UNITS 1,2), 13 NRC 487 (1981)	3.17
ALAB-641	PENNSYLVANIA POWER AND LIGHT CO. AND ALLEGHENY ELECTRIC COOPERATIVE INC. (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), 13 NRC 550 (1981)	3.5.5 5.12.4.1 5.8.5
ALAB-642	SOUTH CAROLINA ELECTRIC AND GAS CO. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), 13 NRC 881 (1981)	2.9.3.3.3 2.9.3.3.4 3.1.2.7
ALAB-643	SOUTH CAROLINA ELECTRIC AND GAS CO. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), 13 NRC 898 (1981)	2.9.3.3.3 5.7.1
ALAB-644	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 13 NRC 903 (1981)	3.1.4.2 3.16 5.1 5.15
ALAB-650	PUBLIC SERVICE ELECTRIC AND GAS CO. (SALEM NUCLEAR GENERATING STATION, UNIT 1), 14 NRC 43 (1981)	4.2 4.4.2 5.10.1 5.10.3 5.5.1 6.15.1.2 6.15.9

ALAB-652	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 2 AND 3), 14 NRC 627 (1981)	5.6.1
ALAB-655	SACRAMENTO MUNICIPAL UTILITY DISTRICT (RANCHO SECO NUCLEAR GENERATING STATION), 14 NRC 799 (1981)	2.9.5.7 4.6 5.6.3
ALAB-657	PHILADELPHIA ELECTRIC CO. (FULTON GENERATING STATION, UNITS 1 AND 2), 14 NRC 967 (1981)	1.3 1.9 3.1.2.1.1 3.4.3
ALAB-659	COMMONWEALTH EDISON CO. (BYRON NUCLEAR POWER STATION, UNITS 1 AND 2), 14 NRC 983 (1981)	4.3.1 5.4
ALAB-660	FLORIDA POWER AND LIGHT CO. (TURKEY POINT PLANT, UNITS 3 AND 4), 14 NRC 987 (1981)	3.5.2.3 6.15.4 6.15.4.2
ALAB-661	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 14 NRC 1117 (1981)	2.5.1 6.3.1
ALAB-662	PUERTO RICO ELECTRIC POWER AUTHORITY (NORTH COAST NUCLEAR PLANT, UNIT 1), 14 NRC 1125 (1981)	1.3 1.9
ALAB-663	SOUTH CAROLINA ELECTRIC AND GAS CO. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), 14 NRC 1140 (1981)	3.1.2.1 3.12.3 5.12.2 6.20.2
ALAB-665	FLORIDA POWER AND LIGHT CO. (ST. LUCIE PLANT, UNIT NO. 2), 15 NRC 22 (1982)	2.9.3.6

ALAB-665 FLORIDA POWER AND LIGHT CO.

6.3
6.3.2

ALAB-666 WISCONSIN ELECTRIC POWER CO.
(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 15 NRC 277 (1982)

5.11
5.11.1
5.11.2

ALAB-668 DUKE POWER CO.
(PERKINS NUCLEAR STATION, UNITS 1, 2 AND 3), 15 NRC 450 (1982)

1.9

ALAB-669 DUKE POWER CO.
(WILLIAM B. MCGUIRE NUCLEAR STATION, UNITS 1 AND 2), 15 NRC 453 (1982)

3.11.1.1
4.4.2
5.10.3
5.6.1

ALAB-671 HOUSTON LIGHTING AND POWER CO.
(ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 15 NRC 508 (1982)

2.9.3.3.3

ALAB-672 HOUSTON LIGHTING AND POWER CO.
(SOUTH TEXAS PROJECT UNITS 1 AND 2), 15 NRC 677 (1982)

3.1.4.1
3.1.4.2

ALAB-673 SOUTHERN CALIFORNIA EDISON CO.
(SAN ONOFRE NUCLEAR GENERATING STATION, UNIT 2 AND 3), 15 NRC 688 (1982)

3.17
5.7.1
5.8.13

ALAB-674 CONSUMERS POWER CO.
(MIDLAND PLANT, UNITS 1 AND 2), 15 NRC 110 (1982)

3.1.2.1
3.1.2.1.1

ALAB-675 CLEVELAND ELECTRIC ILLUMINATING CO.
(PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 15 NRC 110 (1982)

5.12.2.1

ALAB-677	TENNESSEE VALLEY AUTHORITY (BROWNS FERRY NUCLEAR PLANT, UNITS 1, 2 AND 3)), 15 NRC 138 (1982)	6.5.4.1
ALAB-678	COMMONWEALTH EDISON CO. (BRYRON NUCLEAR POWER STATION, UNITS 1 AND 2), 15 NRC 140 (1982)	2.11.4 2.11.5.2 6.16.1
ALAB-680	SOUTHERN CALIFORNIA EDISON CO. (SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 1 AND 2), 16 NRC 127 (1982)	5.5.1 5.6.1 5.6.3 5.7 5.7.1 6.16.1 6.5.1
ALAB-682	ARMED FORCES RADIOBIOLOGY RESEARCH INSTITUTE (COBALT-60 STORAGE FACILITY), 16 NRC 150 (1982)	2.9.3.3.3 2.9.4.1.1 3.10 6.13
ALAB-683	PUGET SOUND POWER AND LIGHT CO. (SKAGIT/HANFORD NUCLEAR POWER PROJECT, UNITS 1 AND 2), 16 NRC 160 (1982)	5.8.1
ALAB-684	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 16 NRC 162 (1982)	3.1.2.5 5.4
ALAB-685	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION UNIT NO.), 16 NRC 449 (1982)	4.6
ALAB-686	OFFSHORE POWER SYSTEMS (MANUFACTURING LICENSE FOR FLOATING NUCLEAR POWER PLANTS), 16 NRC 454 (1982)	4.3
ALAB-687	DUKE POWER CO. (CATAWBA NUCLEAR STATION, UNITS 1 AND 2), 16 NRC 460 (1982) (CATAWBA NUCLEAR STATION, UNITS 1 AND 2), 16 NRC 460 (1982)	2.9.5.8 2.9.5.1 2.9.5.5

ALAB-687	DUKE POWER CO.	3.1.2.1.1 5.12.2.1 5.6.1 6.20.5
ALAB-688	U.S. DEPT. OF ENERGY, PROJECT MANAGEMENT CORP., TENNESSEE VALLEY AUTHORITY (CLINCH RIVER BREEDER REACTOR PLANT), 16 NRC 471 (1982)	5.12.2 5.12.2.1 6.19.2
ALAB-689	OFFSHORE POWER SYSTEMS (MANUFACTURING LICENSE FOR FLOATING NUCLEAR POWER PLANTS), 16 NRC 887 (1982)	4.6
ALAB-690	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 16 NRC 893 (1982)	5.4
ALAB-691	CONSUMERS POWER CO. (MIDLAND PLANT UNITS 1 AND 2), 16 NRC 897 (1982)	1.5.2 3.1.2 3.7.1 4.2 4.2.2 4.6 5.1 5.5.1 6.4.1 6.4.1.1
ALAB-693	PENNSYLVANIA POWER AND LIGHT CO. AND ALLEGHENY ELECTRIC COOPERATIVE INC. (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), 16 NRC 952 (1982)	3.7.2 5.10.3 6.16.1
ALAB-694	SOUTH CAROLINA ELECTRIC AND GAS CO. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1)), 16 NRC 958 (1982)	5.13
ALAB-696	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNIT 1), 16 NRC 1245 (1982)	2.11.1 3.1.2.4 3.1.2.7 3.3.2.4

ALAB-696	WISCONSIN ELECTRIC POWER CO.	3.3.4 3.5 3.5.2.1 4.6 5.13.2 5.4
ALAB-697	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT NO. 1), 16 NRC 1265 (1982)	2.9.9.1 3.7
ALAB-698	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT NO. 1), 16 NRC 1290 (1982)	6.2
ALAB-699	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT NO. 1), 16 NRC 1324 (1982)	3.1.2.2 4.4 4.4.1.1 4.4.2
ALAB-700	PUGET SOUND POWER AND LIGHT CO. (SKAGIT/HANFORD NUCLEAR POWER PROJECT, UNITS 1 AND 2), 16 NRC 1329 (1982)	2.9.4.1.2.
ALAB-704	MISSISSIPPI POWER AND LIGHT CO. (GRAND GULF NUCLEAR STATION, UNITS 1 AND 2), 16 NRC 1725 (1982)	2.9.3.3.3 2.9.3.3.4 6.20.2 6.20.4
ALAB-705	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT NO. 1), 16 NRC 1733 (1982)	6.12.1.2
ALAB-706	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 16 NRC 1754 (1982)	2.9.5 5.12.2.1
ALAB-707	DETROIT EDISON CO. (ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), 16 NRC 1760 (1982)	2.9.3.3.3 2.9.3.3.4

ALAB-707 DETROIT EDISON CO.

4.4.2
6.24

ALAB-709 DETROIT EDISON CO.
(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), 17 NRC 17 (1983)

4.2.2
5.5.1
5.5.2
5.8.1

ALAB-710 SOUTHERN CALIFORNIA EDISON CO.
(VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), 17 NRC 25 (1983)

3.1.1
3.1.2.1
3.12.3

ALAB-712 PUGET SOUND POWER AND LIGHT CO.
(SKAGIT/HANFORD NUCLEAR POWER PROJECT, UNITS 1 AND 2), 17 NRC 81 (1983)

2.9.7

ALAB-713 ARIZONA PUBLIC SERVICE CO.
(PALO VERDE NUCLEAR GENERATING STATION, UNITS 1, 2 AND 3), 17 NRC 83 (1983)

2.9.7
5.6.6

ALAB-714 TEXAS UTILITIES GENERATING CO.
(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 17 NRC 86 (1983)

2.11.2.4
5.6.1
5.7.1

ALAB-715 METROPOLITAN EDISON CO.
(THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 17 NRC 102 (1983)

3.4
6.16.1.2

ALAB-716 TEXAS UTILITIES GENERATING CO.
(COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 17 NRC 341 (1983)

5.7.1

ALAB-717 SOUTHERN CALIFORNIA EDISON CO.
(SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), 17 NRC 346 (1983)

1.8
3.11
3.11.1
3.11.1.1
3.11.1.1.1

ALAB-717	SOUTHERN CALIFORNIA EDISON CO.	3.11.2 3.17 3.4 4.2 4.2.2 6.5.1
ALAB-719	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNIT 1), 17 NRC 387 (1983)	3.3.1 3.6
ALAB-720	GENERAL ELECTRIC CO. (VALLECITOS NUCLEAR CENTER-GENERAL ELECTRIC TEST REACTOR, OPERATING LICENSE TR-1), 17 NRC 397 (1983)	5.6.6
ALAB-721	U.S. DEPT. OF ENERGY, PROJECT MANAGEMENT CORP., TENNESSEE VALLEY AUTHORITY (CLINCH RIVER BREEDER REACTOR PLANT), 17 NRC 539 (1983)	5.7 5.7.1
ALAB-722	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECT NO. 2), 17 NRC 546 (1983)	2.9.5.1 6.16.1 6.24
ALAB-725	CONSUMERS POWER CO. (BIG ROCK POINT NUCLEAR PLANT), 17 NRC 562 (1983)	6.20.3
ALAB-726	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 17 NRC 755 (1983)	3.1.2.1 5.6.1
ALAB-728	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 17 NRC 777 (1983)	1.8 2.9.9 3.1.2.1.1 3.1.2.3 3.14.2 3.4.1 4.6 6.14.3 6.15.1 6.15.1.1

ALAB-728 PACIFIC GAS AND ELECTRIC CO.

6.15.6
6.16.1
6.20.4

ALAB-729 METROPOLITAN EDISON CO.
(THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 17 NRC 814 (1983)

2.9.5.7
3.4.1
5.6.1

ALAB-730 DETROIT EDISON CO.
(ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), 17 NRC 1057 (1983)

1.8
2.9.5.5
2.9.9
3.0

ALAB-731 PUBLIC SERVICE CO. OF NEW HAMPSHIRE
(SEABROOK STATION), 17 NRC 1073 (1983)

5.12.2

ALAB-732 LOUISIANA POWER AND LIGHT CO.
(WATERFORD STEAM ELECTRIC STATION, UNIT 3), 17 NRC 1076 (1983)

2.10.1.2
3.1.1
3.1.2.3
3.11
3.11.1.1
3.12.4
3.13
3.7
4.6
5.10.1
5.6.3
6.16.1.3
6.20.4
6.5.4.1

ALAB-734 PUBLIC SERVICE CO. OF NEW HAMPSHIRE
(SEABROOK STATION, UNITS 1 AND 2), 18 NRC 11 (1983)

5.12.2

ALAB-735 COMMONWEALTH EDISON CO.
(BYRON NUCLEAR POWER STATION, UNITS 1 AND 2), 18 NRC 19 (1983)

3.15
5.12.1

ALAB-736	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 18 NRC 165 (1983)	3.15 3.5.5
ALAB-737	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 18 NRC 168 (1983)	1.8 2.9.5 2.9.5.5 5.12.2 5.12.2.1 5.6.1
ALAB-738	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 18 NRC 177 (1983)	4.4.1 4.4.1.1 4.4.2 5.18 6.5.1 6.5.4.1
ALAB-739	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 18 NRC 335 (1983)	3.1.2.1 5.10.3 5.6.1
ALAB-740	UNION ELECTRIC CO. (CALLAWAY PLANT, UNIT 1), 18 NRC 343 (1983)	3.10 3.4 5.10.3
ALAB-741	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA POWER STATION, UNITS 1 AND 2), 18 NRC 371 (1983)	5.12.2 5.12.2.1
ALAB-742	ARIZONA PUBLIC SERVICE CO. (PALO VERDE NUCLEAR GENERATING STATION, UNITS 2 AND 3), 18 NRC 380 (1983)	5.12.2 5.12.2.1
ALAB-743	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 18 NRC 387 (1983)	2.9.3.3 2.9.3.3.3 5.6.1

ALAB-747	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECT NO. 3), 18 NRC 1167 (1983)	2.9.3.3.4 2.9.5.5 6.4.1
ALAB-748	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 18 NRC 1184 (1983)	3.1.4.1 3.1.4.2
ALAB-749	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 18 NRC 1195 (1983)	3.1.4.1 3.1.4.2
ALAB-750	UNION ELECTRIC CO. (CALLAWAY PLANT, UNIT 1), 18 NRC 1205 (1983)	3.1.2.1 3.14.2 6.24 6.5.4.1
ALAB-751	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 18 NRC 1313 (1983)	3.1.4.1 3.1.4.2
ALAB-752	TENNESSEE VALLEY AUTHORITY (PHIPPS BEND NUCLEAR PLANT, UNITS 1 AND 2), 13 NRC 1318 (1983)	6.5.4.1
ALAB-753	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 18 NRC 1321 (1983)	3.5.3 4.4 4.4.1 4.4.2
ALAB-754	UNION ELECTRIC CO. (CALLAWAY PLANT, UNIT 1), 18 NRC 1333 (1983)	1.8
ALAB-755	U.S. DEPT. OF ENERGY, PROJECT MANAGEMENT CORP., TENNESSEE VALLEY AUTHORITY (CLINCH RIVER BREEDER REACTOR PLANT), 18 NRC 1337 (1983)	1.9 6.19.2

ALAB-756	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 18 NRC 1340 (1983)	4.4.2
ALAB-757	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 18 NRC 1356 (1983)	3.1.4.1 3.1.4.2
ALAB-759	PUBLIC SERVICE ELECTRIC AND GAS CO. (HOPE CREEK GENERATING STATION, UNIT 1), 19 NRC 13 (1984)	3.1.4.1 3.1.4.2 3.17
ALAB-761	U.S. DEPT. OF ENERGY, PROJECT MANAGEMENT CORP., TENNESSEE VALLEY AUTHORITY (CLINCH RIVER BREEDER REACTOR PLANT), 19 NRC 487 (1984)	3.1.1 3.1.2 6.19.2
ALAB-762	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 19 NRC 565 (1984)	5.12.2.1
ALAB-763	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 19 NRC 571 (1984)	3.8
ALAB-764	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 19 NRC 633 (1984)	2.11.2 2.11.2.4 2.11.2.5 2.11.6
ALAB-765	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 19 NRC 645 (1984)	2.2 2.9.5.5 3.1.2.1 3.4.1 6.13 6.5.4.1
ALAB-766	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 19 NRC 981 (1984)	5.19

ALAB-766	METROPOLITAN EDISON CO.	5.19.2
ALAB-767	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECT NO. 3), 19 NRC 984 (1984)	2.9.3.3.3
ALAB-768	DUKE POWER CO. (CATAWBA NUCLEAR STATION, UNITS 1 AND 2), 19 NRC 988 (1984)	5.12.2
ALAB-769	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 19 NRC 995 (1984)	2.9.3.3.4
ALAB-770	COMMONWEALTH EDISON CO. (BYRON NUCLEAR POWER STATION, UNITS 1 AND 2), 19 NRC 1163 (1984)	5.19.2
ALAB-771	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECT NO. 1), 19 NRC 1183 (1984)	3.4.5 3.5.3 6.1.4 6.1.4.3
ALAB-772	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 19 NRC 1193 (1984)	2.10.1 2.11.5.2 2.2 2.9.2 2.9.9 3.1.2.5 3.12 3.12.3 3.12.4 3.14.2 3.4.4 3.7 3.7.1 3.7.2 3.7.3.7 4.2.2 6.27
ALAB-773	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 19 NRC 1333 (1984)	2.11.2.4

ALAB-774	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 19 NRC 1350 (1984)	3.14.2 6.5.4.1
ALAB-775	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 19 NRC 1361 (1984)	3.14.2 4.4.1 4.4.1.1 4.4.2
ALAB-776	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 19 NRC 1373 (1984)	3.1.2
ALAB-777	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 20 NRC 21 (1984)	3.1.4.1 3.1.4.2
ALAB-778	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 20 NRC 42 (1984)	5.5.1 5.8.11 6.13 6.16.1
ALAB-780	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 20 NRC 378 (1984)	5.12.2.1 5.8.3.1
ALAB-781	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 20 NRC 819 (1984)	3.4 5.10.1 5.6.3 6.15.7
ALAB-782	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 20 NRC 838 (1984)	5.6.1 6.24
ALAB-784	KANSAS GAS AND ELECTRIC CO. (WOLF CREEK GENERATING STATION, UNIT 1), 20 NRC 845 (1984)	2.9.5.6

ALAB-784	KANSAS GAS AND ELECTRIC CO.	6.8
ALAB-785	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 20 NRC 848 (1984)	3.1.2.1.1 6.15.1 6.16.1 6.5.1 6.5.4.1
ALAB-786	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 20 NRC 1087 (1984)	4.4.2 6.16.1.2 6.5.4.1
ALAB-787	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 20 NRC 1097 (1984)	5.12.2
ALAB-788	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 20 NRC 1102 (1984)	3.1.2.7 5.1 6.16.1.3 6.16.2 6.9.2.2
ALAB-789	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 20 NRC 1443 (1984)	2.9.4.1.1 5.7.1 6.26
ALAB-790	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA POWER STATION, UNITS 1 AND 2), 20 NRC 1450 (1984)	5.1 6.15.1.1
ALAB-791	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 20 NRC 1579 (1984)	3.5.3 5.12.2 5.12.2.1

ALAB-792	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 20 NRC 1585 (1984)	5.6.1
ALAB-793	COMMONWEALTH EDISON CO. (BYRON NUCLEAR POWER STATION, UNITS 1 AND 2), 20 NRC 1591 (1984)	3.1.2.5 4.6 5.10.3 5.2 6.16.1.3
ALAB-794	DUKE POWER CO. (CATAWBA NUCLEAR STATION, UNITS 1 AND 2), 20 NRC 1630 (1984)	5.7.1
ALAB-795	CONSUMERS POWER CO. (BIG ROCK POINT PLANT), 21 NRC 1 (1985)	5.6.6
ALAB-796	PORTLAND GENERAL ELECTRIC CO. (TROJAN NUCLEAR PLANT), 21 NRC 4 (1985)	4.6
ALAB-799	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 21 NRC 360 (1985)	2.9.3.3.3 2.9.3.5 2.9.5.5 2.9.9 3.1.2.1 3.13 3.3.4 5.10.3 5.5.1
ALAB-801	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION), 21 NRC 479 (1985)	6.16.1
ALAB-802	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 21 NRC 490 (1985)	2.9.2 3.1.2.7 3.11.1.1.1 5.10.3 6.16.1.2

ALAB-803	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 21 NRC 575 (1985)	3.1.2.7 4.4.2 6.16.1
ALAB-804	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 21 NRC 587 (1985)	2.9.5 2.9.5.1 3.1.2.1.1
ALAB-805	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANTS, UNITS 1 AND 2), 21 NRC 596 (1985)	5.12.2 5.12.2.1
ALAB-806	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 21 NRC 1183 (1985)	2.9.5.1 2.9.5.13 2.9.5.5 2.9.5.8
ALAB-807	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 21 NRC 1195 (1985)	2.9.10.1 3.3.7 3.5.5 4.4.2 6.23.3.1
ALAB-808	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 21 NRC 1595 (1985)	2.9.9.2.2 3.11.1.1 5.7.1 6.16.1.3
ALAB-810	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 21 NRC 1616 (1985)	5.7.1
ALAB-811	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 21 NRC 1622 (1985)	3.16

ALJ-78-3	PITTSBURGH-DES MOINES STEEL CO. 8 NRC 649 (1978)	6.10.1 6.10.1.1
ALJ-78-4	RADIATION TECHNOLOGY, INC. 8 NRC 655 (1978)	6.10.1.1
ALJ-80-1	CONSUMERS POWER CO. (PALISADES NUCLEAR PLANT), 12 NRC 117 (1980)	2.11.2.4 2.11.3 6.23.1
CLI-73-10	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 6 AEC 173 (1973)	2.9.3.1 2.9.4.1.4
CLI-73-12	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 6 AEC 241 (1973)	2.11.1 2.9.4.1.4 2.9.5.11 3.5
CLI-73-16	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNITS 1 AND 2), 6 AEC 391 (1973)	2.9.3
CLI-73-8	COMMONWEALTH EDISON CO. (LASALLE COUNTY NUCLEAR STATION, UNITS 1 AND 2), 6 AEC 169 (1973)	2.8.1.1 3.1.4.1
CLI-74-12	ALABAMA POWER CO. (JOSEPH M. FARLEY NUCLEAR PLANT, UNITS 1 AND 2), 7 AEC 203 (1974)	3.17 5.6.2
CLI-74-16	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 7 AEC 313 (1974)	2.11.3 2.11.5

CLI-74-2	MAINE YANKEE ATOMIC POWER CO. (MAINE YANKEE ATOMIC POWER STATION), 7 AEC 2 (1974)	3.7.2 3.9
CLI-74-23	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 2), 7 AEC 947 (1974)	2.9.5.9 6.16.1.3 6.16.2
CLI-74-28	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 3), UNIT 3), 8 AEC 7 (1974)	3.4.2
CLI-74-29	CONSUMERS POWER CO. (QUANICASSEE PLANT, UNITS 1 AND 2), 8 AEC 10 (1974)	1.9
CLI-74-3	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 7 AEC 7 (1974)	6.24.4
CLI-74-32	PHILADELPHIA ELECTRIC CO. (PEACH BOTTOM ATOMIC STATION, UNITS 2 AND 3), 8 AEC 217 (1974)	2.10.2
CLI-74-35	COMMONWEALTH EDISON CO. (ZION STATION, UNITS 1 AND 2), 8 AEC 374 (1974)	3.3.2.3
CLI-74-37	CONSUMERS POWER CO. (QUANICASSEE PLANT, UNITS 1 AND 2), 8 AEC 627 (1974)	1.9
CLI-74-39	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 8 AEC 631 (1974)	4.4.2
CLI-74-40	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 8 AEC 809 (1974)	3.16.1 6.16.2 6.21.2 6.9.1

CLI-74-43	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 8 AEC 826 (1974)	6.16.2 6.21.2 6.9.1
CLI-74-45	WISCONSIN ELECTRIC POWER CO. (KOSHKONONG NUCLEAR PLANT, UNITS 1 AND 2), 8 AEC 928 (1974)	2.11.1
CLI-75-1	NORTHERN STATES POWER CO. (PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2), 1 NRC 1 (1975)	2.9.9.2.1 2.9.9.3 3.11.3 3.13.1 5.1 5.5
CLI-75-14	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT 3), UNIT 3), 2 NRC 835 (1975)	3.9 6.15.8.1
CLI-75-2	WISCONSIN ELECTRIC POWER CO. (KOSHKONONG NUCLEAR POWER PLANT, UNITS 1 AND 2), 1 NRC 39 (1975)	3.3.2.2
CLI-75-4	NUCLEAR FUEL SERVICES, INC. (WEST VALLEY REPROCESSING PLANT), 1 NRC 273 (1975)	2.11.1 2.9.3.3.3 2.9.3.3.4 2.9.5.5
CLI-75-8	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNITS 1, 2 AND 3), 2 NRC 173 (1975)	6.24.1 6.24.3
CLI-76-1	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 3 NRC 73 (1976)	5.4 5.8.11
CLI-76-13	USERDA (CLINCH RIVER BREEDER REACTOR PLANT), 4 NRC 67 (1976)	5.12.2.1 5.15

CLI-76-13	USERDA	6.15.1
CLI-76-14	VERMONT YANKEE NUCLEAR POWER CORP. (VERMONT YANKEE NUCLEAR POWER STATION), 4 NRC 163 (1976)	5.6.2 6.21.1
CLI-76-17	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 4 NRC 451 (1976)	6.16.1
CLI-76-2	NATURAL RESOURCES DEFENSE COUNCIL 3 NRC 76 (1976)	5.15.2
CLI-76-22	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), 4 NRC 480 (1976)	1.5.2 6.5.4.1
CLI-76-23	NUCLEAR REGULATORY COMMISSION (FINANCIAL ASSISTANCE TO PARTICIPANTS IN COMMISSION PROCEEDINGS), 4 NRC 494 (1976)	2.9.10.1
CLI-76-26	PORTLAND GENERAL ELECTRIC CO. (PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2), 4 NRC 608 (1976)	3.3.6
CLI-76-27	PORTLAND GENERAL ELECTRIC CO. (PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2), 4 NRC 610 (1976)	2.9.4 2.9.4.1.1 2.9.4.2
CLI-76-6	EDLOW INTERNATIONAL CO. 3 NRC 563 (1976)	2.9.4.1.3
CLI-77-1	KANSAS GAS AND ELECTRIC CO. (WOLF CREEK NUCLEAR GENERATING STATION), 5 NRC 1 (1977)	3.1.2.1 3.1.2.2 6.15.8.3 6.19 6.19.1

CLI-77-11	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECTS 3 AND 5), 5 NRC 719 (1977)	3.1.1 6.19.1
CLI-77-13	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 5 NRC 1303 (1977)	3.17 6.3.1
CLI-77-16	EDLOW INTERNATIONAL CO. (APPLICATION TO EXPORT SPECIAL NUCLEAR MATERIALS), 5 NRC 1327 (1977)	3.3.6
CLI-77-18	BABCOCK AND WILCOX (APPLIC. FOR CONSID. OF FACILITY EXPORT LICENSE) EXPORT LICENSE), 5 NRC 1332 (1977)	2.9.4.1.3
CLI-77-2	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNITS 1, 2 AND 3), 5 NRC 13 (1977)	3.7 6.5.4.1
CLI-77-22	TOLEDO EDISON CO. AND CLEVELAND ELECTRIC ILLUMINATING CO. (DAVIS-BESSE STATION, UNITS 1, 2, 3); PERRY PLANT, UNITS 1 AND 2), 6 NRC 451 (1977)	
CLI-77-24	IN THE MATTER OF TEN APPLICATIONS 6 NRC 525 (1977)	2.9.4.1.3
CLI-77-25	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 6 NRC 535 (1977)	2.10.2 5.15
CLI-77-3	LICENSE TO TRANSP. STRATEGIC QUANTITIES OF SPECIAL NUCLEAR MATERIALS 5 NRC 16 ()	6.24.3
CLI-77-31	EXXON NUCLEAR CO. (LOW ENRICHED URANIUM EXPORTS TO EURATOM MEMBER NATIONS), 6 NRC 849 (1977)	2.9.10.1

CLI-77-4	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNITS 1, 2 AND 3), 5 NRC 31 (1977)	6.1.5
CLI-77-8	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 5 NRC 503 (1977)	3.1.2.1.1 5.15 5.19.3 5.7 5.7.1 6.15 6.15.2 6.15.3.1 6.15.4.1 6.15.4.2
CLI-78-1	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 7 NRC 1 (1978)	3.17 5.12.3 5.6.3 5.7 6.15.3 6.15.8.4 6.8
CLI-78-10	MIXED OXIDE FUEL 7 NRC 711 (1978)	4.3
CLI-78-12	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 7 NRC 939 (1978)	2.9.3.3.3 2.9.3.6 2.9.7 5.8.1 6.3 6.3.1 6.3.2
CLI-78-14	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 7 NRC 952 (1978)	5.19.1 6.15.4 6.15.8.1
CLI-78-15	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 8 NRC 1 (1978)	4.7

CLI-78-17	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 8 NRC 179 (1978)	6.15.8.4
CLI-78-3	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 2), 7 NRC 307 (1978)	5.12.3 5.7
CLI-78-4	EDLOW INTERNATIONAL CO. (APPLICATION TO EXPORT SPECIAL NUCLEAR MATERIALS), 7 NRC 311 (1978)	3.3.6
CLI-78-5	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 7 NRC 397 (1978)	6.3
CLI-78-6	PETITION FOR EMERGENCY AND REMEDIAL ACTION 7 NRC 400 (1978)	1.8 6.16.2 6.16.3 6.20.3 6.26
CLI-78-7	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 7 NRC 429 (1978)	6.24 6.24.2 6.24.3 6.24.6
CLI-79-10	CAROLINA POWER AND LIGHT CO. (SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 10 NRC 675 (1979)	4.4.2
CLI-79-3	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 9 NRC 107 (1979)	6.4.2.2
CLI-79-5	CAROLINA POWER AND LIGHT CO. (SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 9 NRC 607 (1979)	3.1.2.1 4.4.2

CLI-79-6	NUCLEAR ENGINEERING CO. (SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), 9 NRC 673 (1979)	6.24.3 6.24.4
CLI-79-8	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 10 NRC 141 (1979)	2.11.2.2 2.11.4
CLI-80-1	NUCLEAR ENGINEERING CO. (SHEFFIELD, ILL. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITE), 11 NRC 1 (1980)	3.1.1 3.1.4.2 4.4.2 4.5 5.15 6.16.1 6.24 6.24.3
CLI-80-10	PUBLIC SERVICE CO. OF INDIANA (MARBLE HILL NUCLEAR GENERATING STATION, UNITS 1 AND 2), 11 NRC 438 (1980)	2.9.3.1 2.9.4.1.1 2.9.4.2 6.24 6.24.1.3
CLI-80-11	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 11 NRC 511 (1980)	3.1.4.2 5.6.7
CLI-80-12	CAROLINA POWER AND LIGHT CO. (SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 11 NRC 514 (1980)	1.8 2.5.1 3.1.2.1.1 3.1.2.5 3.16 3.3.1 3.3.1.1 3.4 3.7.3.7 4.3 5.19.1 5.2 5.5 5.6.1 5.6.3 6.16.1

CLI-80-14	WESTINGHOUSE ELECTRIC CORP. (EXPORTS TO THE PHILLIPINES), 11 NRC 631 (1980)	5.7.1 6.29.2.1 6.29.2.2
CLI-80-15	WESTINGHOUSE ELECTRIC CORP. (EXPORTS TO THE PHILLIPINES), 11 NRC 672 (1980)	6.15.1.1 6.29.2
CLI-80-16	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 11 NRC 674 (1980)	3.4
CLI-80-17	PENNSYLVANIA POWER AND LIGHT CO. (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), 11 NRC 678 (1980)	5.14
CLI-80-19	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 11 NRC 700 (1980)	2.9.10.1
CLI-80-20	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 11 NRC 705 (1980)	2.9.10.1
CLI-80-21	IN RE PETITION FOR EMERGENCY AND REMEDIAL ACTION 11 NRC 707 (1980)	3.7.1 6.24
CLI-80-22	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 2), 11 NRC 724 (1980)	2.11.5
CLI-80-23	ROCHESTER GAS AND ELECTRIC CORP. (STERLING POWER PROJECT, UNIT 1), 11 NRC 731 (1980)	6.15.4
CLI-80-24	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 11 NRC 775 (1980)	2.9.5.9 6.23.3.2

CLI-80-27	NUCLEAR FUEL SERVICES, INC. (ERWIN, TENNESSEE), 11 NRC 799 (1980)	6.29.1
CLI-80-28	SOUTH CAROLINA ELECTRIC AND GAS CO. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), 11 NRC 817 (1980)	6.3.1
CLI-80-3	DUKE POWER CO. (AMENDMENT TO MATERIALS LIC. SNM-1773), 11 NRC 185 (1980)	3.3.7
CLI-80-30	WESTINGHOUSE ELECTRIC CORP. (EXPORT TO SOUTH KOREA), 12 NRC 253 (1980)	2.9.4.1.3 3.2.1 3.4.6
CLI-80-31	PUBLIC SERVICE CO. OF OKLAHOMA (BLACK FOX STATION, UNITS 1 AND 2), 12 NRC 264 (1980)	3.4 6.15.2
CLI-80-32	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 12 NRC 281 (1980)	2.2
CLI-80-34	PUGET SOUND POWER AND LIGHT CO. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), 12 NRC 407 (1980)	2.9.3.3.5
CLI-80-35	PUBLIC SERVICE CO. OF OKLAHOMA (BLACK FOX STATION, UNITS 1 AND 2), 12 NRC 409 (1980)	6.23.1
CLI-80-36	NORTHERN STATES POWER CO. (TYRONE ENERGY PARK, UNIT 1), 12 NRC 523 (1980)	2.9.4.1.4
CLI-80-38	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNIT 1), 12 NRC 547 (1980)	2.9.4.1.1
CLI-80-4	VIRGINIA ELECTRIC AND POWER CO. (SURRY NUCLEAR POWER STATION, UNITS 1 AND 2), 11 NRC 405 (1980)	6.15.1.1

CLI-80-41	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 12 NRC 650 (1980)	5.17
CLI-80-5	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 11 NRC 408 (1980)	3.7.3.7
CLI-80-6	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 11 NRC 411 (1980)	5.16.1
CLI-80-7	ATLANTIC RESEARCH CORP. 11 NRC 413 (1980)	6.24.5
CLI-80-9	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 11 NRC 436 (1980)	3.1.4.1
CLI-81-1	CONSOLIDATED EDISON CO. OF N.Y.; POWER AUTHORITY OF THE STATE OF N.Y. (INDIAN POINT, UNIT 2); (INDIAN POINT, UNIT 3), 13 NRC 1 (1981)	3.1.2.7 5.16.1
CLI-81-2	GENERAL ELECTRIC CO., WESTINGHOUSE ELECTRIC CO., COMBUSTION ENGINEERING (EXPORTS TO TAIWAN), 13 NRC 67 (1981)	3.2.1 3.4.6 6.29.2.1
CLI-81-23	CONSOLIDATED EDISON CO. OF N.Y.; POWER AUTHORITY OF THE STATE OF N.Y. (INDIAN POINT, UNIT 2); (INDIAN POINT, UNIT 3), 14 NRC 610 (1981)	3.1.2.7 5.16.1
CLI-81-24	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 14 NRC 614 (1981)	3.4.2
CLI-81-25	COMMONWEALTH EDISON CO. (DRESDEN NUCLEAR POWER STATION, UNIT 1), 14 NRC 616 (1981)	2.10.1.1 2.9.4.1.2 2.9.4.2 2.9.5.1 3.3.6

CLI-81-25	COMMONWEALTH EDISON CO.	6.1.4 6.15.1
CLI-81-26	CENTRAL ELECTRIC POWER COOPERATIVE, INC. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), 14 NRC 787 (1981)	4.5 6.3.1
CLI-81-27	ALABAMA POWER CO. (JOSEPH M. FARLEY NUCLEAR PLANT, UNITS 1 AND 2), 14 NRC 795 (1981)	5.7.1
CLI-81-29	NUCLEAR FUEL SERVICES, INC. AND N.Y.S. ENERGY RESEARCH AND DEVELOPMENT AUTHORITY (WESTERN NEW YORK NUCLEAR SERVICE CENTER), 14 NRC 940 (1981)	5.7.1 6.1.4
CLI-81-31	FLORIDA POWER AND LIGHT CO. (TURKEY POINT PLANT, UNITS 3 AND 4), 14 NRC 959 (1981)	2.9.3 2.9.3.1
CLI-81-32	CONSUMERS POWER CO. (BIG ROCK POINT PLANT), 14 NRC 962 (1981)	2.9.3 2.9.3.1
CLI-81-36	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 14 NRC 1111 (1981)	3.1.2.3 3.4.2
CLI-81-4	ENVIRONMENTAL RADIATION PROTECTION STDS. FOR NUCLEAR POWER OPERATIONS, 40 CFR 190 13 NRC 298 (1981)	5.7.1
CLI-81-6	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 13 NRC 443 (1981)	3.1.2.1 6.24.1
CLI-81-8	STATEMENT OF POLICY ON CONDUCT OF LICENSING PROCEEDINGS 13 NRC 452 (1981)	2.11.1 2.11.2.8 2.9.9.2.2

CLI-81-8	STATEMENT OF POLICY ON CONDUCT OF LICENSING PROCEEDINGS	2.9.9.4 3.1.2.7 3.12 3.13.1 3.3.2.4 4.1 4.2.2
CLI-82-10	SOUTH CAROLINA ELECTRIC AND GAS CO. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1)). 15 NRC 137 (1982)	3.1.2.5
CLI-82-11	SOUTHERN CALIFORNIA EDISON CO. (SAN ONOFRE NUCLEAR GENERATING STATION, UNIT 2 AND 3), 15 NRC 138 (1982)	2.9.9.4 3.13.1 5.12.3
CLI-82-15	CONSOLIDATED EDISON CO. OF N.Y.; POWER AUTHORITY OF THE STATE OF N.Y. (INDIAN POINT, UNIT 2), (INDIAN POINT, UNIT 3), 16 NRC 27 (1982)	2.9.3 3.1.2.7
CLI-82-16	BOSTON EDISON CO. (PILGRIM NUCLEAR POWER STATION), 16 NRC 44 (1982)	2.9.3.1 6.24.1.3
CLI-82-2	KERR-MCGEE CORP. (WEST CHICAGO RARE EARTHS FACILITY), 15 NRC 23 (1982)	2.2 2.5 6.13 6.15.1.2
CLI-82-20	CINCINNATI GAS AND ELECTRIC CO. (WM. H. ZIMMER NUCLEAR POWER STATION, UNIT 1), 16 NRC 109 (1982)	3.14.2
CLI-82-21	KERR-MCGEE CORP. (WEST CHICAGO RARE EARTHS FACILITY), 16 NRC 401 (1982)	2.2
CLI-82-23	U.S. DEPT. OF ENERGY, PROJECT MANAGEMENT CORP., TENNESSEE VALLEY AUTHORITY (CLINCH RIVER BREEDER REACTOR PLANT), 16 NRC 412 (1982)	3.17 6.1.4

CLI-82-23	U.S. DEPT. OF ENERGY, PROJECT MANAGEMENT CORP., TENNESSEE VALLEY AUTHORITY	6.15.8 6.19
CLI-82-26	TENNESSEE VALLEY AUTHORITY (BROWNS FERRY NUCLEAR PLANT, UNITS 1, 2, AND 3), 16 NRC 880 (1982)	5.15
CLI-82-29	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECT NOS. 1 AND 2), 16 NRC 122 (1982)	3.4.5
CLI-82-31	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT NO. 1), 16 NRC 1236 (1982)	3.1.2.1. 6.10.1.1
CLI-82-36	CINCINNATI GAS AND ELECTRIC CO. (WILLIAM H. ZIMMER NUCLEAR POWER STATION, UNIT NO. 1), 16 NRC 1512 (1982)	6.4.2 6.4.2.3
CLI-82-37	OFFSHORE POWER SYSTEMS (MANUFACTURING LICENSE FOR FLOATING NUCLEAR POWER PLANTS), 16 NRC 1691 (1982)	4.3
CLI-82-39	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 16 NRC 1712 (1982)	3.4.4 4.4.1
CLI-82-40	CINCINNATI GAS AND ELECTRIC CO. (WILLIAM H. ZIMMER NUCLEAR POWER STATION, UNIT NO. 1), 16 NRC 1717 (1982)	2.9.10.1
CLI-82-41	CONSOLIDATED EDISON CO. OF N.Y.; POWER AUTHORITY OF THE STATE OF N.Y. (INDIAN POINT, UNIT 2); (INDIAN POINT, UNIT 3), 16 NRC 1721 (1982)	1.8 6.5.3.1
CLI-82-5	PACIFIC GAS AND ELECTRIC CO. (STANISLAUS NUCLEAR PROJECTS, UNIT 1), 15 NRC 404 (1982)	1.9

CLI-82-8 U.S. DEPT. OF ENERGY, PROJECT MANAGEMENT CORP., TENNESSEE VALLEY AUTHORITY
(CLINCH RIVER BREEDER REACTOR PLANT), 15 NRC 109 (1982)

5.17

CLI-82-9 HOUSTON LIGHTING AND POWER CO.
(SOUTH TEXAS PROJECT UNITS 1 AND 2), 15 NRC 136 (1982)

3.1.4.2

CLI-83-1 U.S. DEPT. OF ENERGY, PROJECT MANAGEMENT CORP., TENNESSEE VALLEY AUTHORITY
(CLINCH RIVER BREEDER REACTOR PLANT), 17 NRC 1 (1983)

6.19

CLI-83-15 ROCKWELL INTERNATIONAL CORP.
(ENERGY SYSTEMS GROUP SPECIAL NUCLEAR MATERIALS LICENSE NO. SNM-21), 17 NRC 1001 (1983)

2.2
6.13

CLI-83-16 CONSOLIDATED EDISON CO. OF N.Y.; POWER AUTHORITY OF THE STATE OF N.Y.
(INDIAN POINT, UNIT 2); (INDIAN POINT, UNIT 3), 17 NRC 1006 (1983)

1.8
6.10.1
6.24

CLI-83-19 DUKE POWER CO.
(CATAMBA NUCLEAR STATION, UNITS 1 AND 2), 17 NRC (1983)
(CATAMBA NUCLEAR STATION, UNITS 1 AND 2), 17 NRC 1041 (1983)

2.9.5.8
2.9.1
2.9.3
2.9.5
2.9.5.1
2.9.5.5
3.1.2.1
3.4.1
3.7
5.6.1
6.20

CLI-83-2 CONSUMERS POWER CO.
(MIDLAND PLANT, UNITS 1 AND 2), 17 NRC 69 (1983)

1.5.2

CLI-83-21 MAINE YANKEE ATOMIC POWER CO.
(MAINE YANKEE ATOMIC POWER STATION), 18 NRC 157 (1983)

6.10.1

CLI-83-22 METROPOLITAN EDISON CO.
(THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 18 NRC 299 (1983)

6.16.2
6.20.3

CLI-83-23 PUBLIC SERVICE CO. OF NEW HAMPSHIRE
(SEABROOK STATION, UNITS 1 AND 2), 18 NRC 311 (1983)

2.9.5.5

CLI-83-25 METROPOLITAN EDISON CO.
(THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 18 NRC 327 (1983)

2.10.1.2
2.9.3
2.9.3.3.3
2.9.4
2.9.4.1

CLI-83-26 NRC CONCURRENCE IN ... GUIDELINES UNDER NUCLEAR WASTE POLICY ACT OF 1982
18 NRC 1139 (1983)

2.2

CLI-83-3 METROPOLITAN EDISON CO.
(THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 17 NRC 72 (1983)

6.5.1

CLI-83-31 DUKE POWER CO.
(CATANWA NUCLEAR STATION, UNITS 1 AND 2), 18 NRC 1303 (1983)

2.11.2.4

CLI-83-32 PACIFIC GAS AND ELECTRIC CO.
(DIABLE CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 18 NRC 1309 (1983)

1.8
2.9.9
3.1.2.1.1
3.1.2.3
3.14.2
3.4.1
4.6
6.14.3
6.15.1
6.15.1.1
6.15.6
6.16.1
6.20.4

CLI-83-4 CINCINNATI GAS AND ELECTRIC CO.
(WILLIAM H. ZIMMER NUCLEAR POWER STATION, UNIT 1), 17 NRC 75 (1983)

6.5.1

CLI-83-5 METROPOLITAN EDISON CO.
(THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 17 NRC 331 (1983)

6.5.1

CLI-83-6	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 17 NRC 333 (1983)	5.7
CLI-84-11	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 20 NRC 1 (1984)	2.9.5.7 3.4.1 5.6.1
CLI-84-17	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 20 NRC 801 (1984)	5.7.1
CLI-84-19	MISSISSIPPI POWER AND LIGHT CO. (GRAND GULF NUCLEAR STATION, UNIT 1), 20 NRC 1055 (1984)	6.1 5
CLI-84-20	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 20 NRC 1061 (1984)	3.1.4.1
CLI-84-21	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 20 NRC 1437 (1984)	5.7.1
CLI-84-6	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNIT 2), 19 NRC 975 (1984)	2.9.4.1.1 2.9.5.1 3.4.5
CLI-84-8	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 19 NRC 1154 (1984)	3.1.1 6.19
CLI-84-9	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 19 NRC 1323 (1984)	6.15.1.1
CLI-85-10	SOUTHERN CALIFORNIA EDISON CO. (SAN ONOFRE NUCLEAR GENERATING STATION, UNIT 1), 21 NRC 1569 (1985)	6.26

CLI-85-12	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION), 21 NRC 1587 (1985)	6.15.1.1
CLI-85-2	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 21 NRC 282 (1985)	2.11.5.2 2.9.10.1 2.9.4.1.1 2.9.9 3.1.2.5 3.12 3.12.3 3.12.4 3.14.2 3.4.4 3.7 3.7.1 3.7.2 3.7.3.7 4.2.2
CLI-85-4	GENERAL PUBLIC UTILITIES CORP. (THREE MILE ISLAND NUCLEAR STATION, UNITS 1 AND 2), (OYSTER CREEK NUCLEAR GENERATING STATION), 21 NRC 561 (1985)	6.24.1
CLI-85-5	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 21 NRC 566 (1985)	3.1.4.2
CLI-85-7	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 21 NRC 1104 (1985) (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 21 NRC 1111 (1985)	4.4.2 4.4.4 3.14.2
CLI-85-9	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 21 NRC 1118 (1985)	3.7.3.7 6.10.1
DOC. NO. 50	DAIRYLAND POWER COOPERATIVE (LA CROSSE BOILING WATER REACTOR)), UNPUBL. DEC (1980)	2.9.10.1
LBP-73-29	TENNESSEE VALLEY AUTHORITY (BROWNS FERRY NUCLEAR PLANT, UNITS 1, 2 AND 3)), 6 AEC 682 (1973)	3.5

LBP-73-31	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 6 AEC 717 (1973)	2.9.3.4
LBP-73-41	MISSISSIPPI POWER AND LIGHT CO. (GRAND GULF NUCLEAR STATION, UNITS 1 AND 2), 6 AEC 1057 (1973)	2.9.3.5 2.9.8
LBP-74-22	DUKE POWER CO. (CATAWBA NUCLEAR STATION UNITS 1 AND 2), 7 AEC 659 (1974)	3.10
LBP-74-25	DUQUESNE LIGHT CO. (BEAVER VALLEY POWER STATION, UNIT 2), 7 AEC 711 (1974)	3.10
LBP-74-26	NIAGARA MOHAWK POWER CORP. (NINE MILE POINT NUCLEAR STATION, UNIT 2), 7 AEC 758 (1974)	3.10
LBP-74-36	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 7 AEC 877 (1974)	1.9 3.5 3.5.3
LBP-74-5	DUKE POWER CO. (CATAWBA NUCLEAR STATION UNITS 1 AND 2), 7 AEC 82 (1974)	3.10
LBP-74-54	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 8 AEC 112 (1974)	3.7
LBP-74-63	BOSTON EDISON CO. (PILGRIM NUCLEAR STATION, UNIT 2), 8 AEC 330 (1974)	2.9.3.3.3
LBP-74-74	GULF STATES UTILITIES CO. (RIVER BEND STATION, UNITS 1 AND 2), 8 AEC 669 (1974)	2.11.5
LBP-75-10	GULF STATES UTILITIES CO. (RIVER BEND STATION, UNITS 1 AND 2), 1 NRC 246 (1975)	3.5

LBP-75-19	NORTHEAST NUCLEAR ENERGY CO. (MONTAGUE NUCLEAR POWER STATION, UNITS 1 AND 2), 1 NRC 436 (1975)	1.8 6.5.3.1
LBP-75-28	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 1 NRC 513 (1975)	2.11.2.4
LBP-75-62	PUBLIC SERVICE ELECTRIC AND GAS CO. (ATLANTIC GENERATING STATION, UNITS 1 AND 2), 2 NRC 702 (1975)	2.11.5.2
LBP-75-67	OFFSHORE POWER SYSTEMS (MANUFACTURING LICENSE FOR FLOATING NUCLEAR POWER PLANTS), 2 NRC 813 (1975)	2.11.5.2 2.9.2 3.3.2.1 3.3.2.4
LBP-75-9	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 1 NRC 243 (1975)	3.5.2.2
LBP-76-10	TENNESSEE VALLEY AUTHORITY (BROWNS FERRY NUCLEAR PLANT, UNITS 1 AND 2), 3 NRC 209 (1976)	2.9.3.1 2.9.5.1
LBP-76-7	BOSTON EDISON CO. (PILGRIM NUCLEAR STATION, UNIT 2), 3 NRC 156 (1976)	2.9.9.5 3.6
LBP-76-8	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3), 3 NRC 199 (1976)	2.11.2.2
LBP-77-11	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR STATION, UNIT 1), 5 NRC 481 (1977)	2.9.4.1.2
LBP-77-13	ALLIED-GENERAL NUCLEAR SERVICES (BARNWELL FUEL RECEIVING AND STORAGE STATION), 5 NRC 489 (1977)	2.11.2 2.11.2.2

LBP-77-14	TENNESSEE VALLEY AUTHORITY (PHIPPS BEND NUCLEAR PLANT, UNITS 1 AND 2), 5 NRC 494 (1977)	6.15
LBP-77-15	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECTS 3 AND 5), 5 NRC 643 (1977)	3.1.2.2 6.19 6.19.1
LBP-77-16	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECTS 3 AND 5), 5 NRC 650 (1977)	2.9.3
LBP-77-17	PUBLIC SERVICE CO. OF OKLAHOMA (BLACK FOX STATION, UNITS 1 AND 2), 5 NRC 657 (1977)	2.9.4.1.1
LBP-77-18	PUBLIC SERVICE CO. OF OKLAHOMA (BLACK FOX STATION, UNITS 1 AND 2), 5 NRC 671 (1977)	2.11.2.2 3.12.4.1
LBP-77-20	DUKE POWER CO. (WILLIAM B. MCGUIRE STATION, UNITS 1 AND 2), 5 NRC 680 (1977)	3.17 3.5.3
LBP-77-21	LONG ISLAND LIGHTING CO. (JAMESPORT NUCLEAR STATION, UNITS 1 AND 2), 5 NRC 684 (1977)	6.15.3 6.15.3.1
LBP-77-23	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT UNITS 1 AND 2; TURKEY POINT, UNITS 3 AND 4), 5 NRC 789 (1977)	2.9.3.3.3 3.1.2.1.1
LBP-77-24	ALABAMA POWER CO. (JOSEPH M. FARLEY NUCLEAR PLANT, UNITS 1 AND 2), 5 NRC 804 (1977)	6.3
LBP-77-35	SOUTHERN CALIFORNIA EDISON CO. (SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), 5 NRC 1290 (1977)	3.1.2.2 6.20.1

LBP-77-37	NORTHERN STATES POWER CO. (TYRONE ENERGY PARK, UNIT 1), 5 NRC 1298 (1977)	2.11.5.2
LBP-77-5	OMAHA PUBLIC POWER DISTRICT (FORT CALHOUN STATION, UNIT 2), 5 NRC 437 (1977)	1.1
LBP-77-60	TENNESSEE VALLEY AUTHORITY (PHIPPS BEND NUCLEAR PLANT, UNITS 1 AND 2), 6 NRC 647 (1977)	6.15.4.2
LBP-77-61	PUGET SOUND POWER AND LIGHT CO. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), 6 NRC 674 (1977)	6.19.1
LBP-77-69	PORTLAND GENERAL ELECTRIC CO. (TROJAN NUCLEAR PLANT), 6 NRC 1179 (1977)	6.1.6
LBP-77-7	TOLEDO EDISON CO. (DAVIS-BESSE NUCLEAR POWER STATION, UNITS 1,2,3), 5 NRC 452 (1977)	4.3 6.3
LBP-77-9	PUBLIC SERVICE ELECTRIC AND GAS CO. (HOPE CREEK GENERATING STATION, UNITS 1 AND 2), 5 NRC 474 (1977)	2.9.3.3.3
LBP-78-11	DETROIT EDISON CO. (ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), 7 NRC 381 (1978)	2.9.4.1.1 2.9.4.1.2 2.9.4.1.4 2.9.4.2 2.9.5.3 3.1.2.1 3.1.2.5 6.1.4.4 6.15 6.15.6 6.16.1
LBP-78-13	DETROIT EDISON CO. (ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), 7 NRC 583 (1978)	2.9.3.6 2.9.4.1.1 6.3

LBP-78-13	DETROIT EDISON CO.	6.3.1
LBP-78-15	PUBLIC SERVICE ELECTRIC AND GAS CO. (HOPE CREEK GENERATING STATION, UNITS 1 AND 2), 7 NRC 642 (1978)	3.12
LBP-78-18	NEW ENGLAND POWER CO. (NEP UNITS 1 AND 2), 7 NRC 932 (1978)	2.9.3.3.3
LBP-78-2	CAROLINA POWER AND LIGHT CO. (SHEARON HARRIS NUCLEAR PLANT, UNITS 1-4), 7 NRC 83 (1978)	4.4 4.4.1.1 4.4.2
LBP-78-20	PACIFIC GAS AND ELECTRIC CO. (STANISLAUS NUCLEAR PROJECT, UNIT 1), 7 NRC 1038 (1978)	2.11.2 2.11.2.2
LBP-78-22	CAROLINA POWER AND LIGHT CO. (H. B. ROBINSON, UNIT 2)), 7 NRC 1052 (1978)	6.15.8.4
LBP-78-23	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 8 NRC 71 (1978)	2.6 2.9.3 2.9.3.1 3.1.2.2
LBP-78-24	WISCONSIN PUBLIC SERVICE CORP. (KEWAUNEE NUCLEAR PLANT)), 8 NRC 78 (1978)	2.9.3.1 2.9.3.3.3
LBP-78-26	PUBLIC SERVICE CO. OF OKLAHOMA (BLACK FOX STATION, UNITS 1 AND 2), 8 NRC 102 (1978)	6.15.1 6.15.6 6.19.2
LBP-78-27	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 8 NRC 275 (1978)	2.6.3.3

LBP-78-27	CONSUMERS POWER CO.	2.9.3.1 2.9.4 2.9.7 5.8.1
LBP-78-28	PUBLIC SERVICE CO. OF OKLAHOMA (BLACK FOX STATION, UNITS 1 AND 2), 8 NRC 281 (1978)	6.15
LBP-78-31	UNION ELECTRIC CO. (CALLAWAY PLANT, UNITS 1 AND 2), 8 NRC 366 (1978)	3.1.2.1 6.10
LBP-78-32	PORTLAND GENERAL ELECTRIC CO. (TROJAN NUCLEAR PLANT), 8 NRC 413 (1978)	3.16
LBP-78-33	GENERAL ELECTRIC CO. (VALLECITOS NUCLEAR CENTER, GENERAL ELECTRIC TEST REACTOR), 8 NRC 461 (1978)	2.11.2.4
LBP-78-36	PACIFIC GAS AND ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 8 NRC 567 (1978)	3.12.4
LBP-78-37	DETROIT EDISON CO. (ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), 8 NRC 575 (1978)	1.7.1 2.11.1 2.11.2.1 2.9.4 2.9.4.1.2 2.9.5.6
LBP-78-40	PORTLAND GENERAL ELECTRIC CO. (TROJAN NUCLEAR PLANT), 8 NRC 717 (1978)	6.1.3.1 6.1.4.4
LBP-78-5	PUBLIC SERVICE ELECTRIC AND GAS CO. (ATLANTIC GENERATING STATION, UNITS 1 AND 2), 7 NRC 147 (1978)	2.8.1.3

LBP-78-6	SOUTH CAROLINA ELECTRIC AND GAS CO. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), 7 NRC 209 (1978)	2.9.3.3.3
LBP-78-9	NEW ENGLAND POWER CO. (NEP UNITS 1 AND 2), 7 NRC 271 (1978)	1.5.1 1.8 3.1.2.5 6.16.1
LBP-79-1	DETROIT EDISON CO. (ENRICO FERMI ATOMIC POWER PLANT, UNIT 2)), 9 NRC 73 (1979)	2.9.3.1 2.9.4.1.1 2.9.4.1.2 2.9.4.1.4 3.16
LBP-79-10	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 9 NRC 439 (1979)	2.9.4.1.1 2.9.4.1.2 2.9.4.2 3.17 6.15
LBP-79-14	PUBLIC SERVICE ELECTRIC AND GAS CO. (SALEM NUCLEAR GENERATING STATION, UNIT 1), 9 NRC 557 (1979)	3.5.1.2 3.5.3
LBP-79-15	OFFSHORE POWER SYSTEMS (FLOATING NUCLEAR POWER PLANTS), 9 NRC 653 (1979)	6.15.2
LBP-79-16	PUGET SOUND POWER AND LIGHT CO. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), 9 NRC 711 (1979)	2.9.3.3.3
LBP-79-17	CINCINNATI GAS AND ELECTRIC CO. (WILLIAM H. ZIMMER NUCLEAR STATION), 9 NRC 723 (1979)	2.9.2
LBP-79-20	CONSUMERS POWER CO. (PALISADES NUCLEAR PLANT), 10 NRC 108 (1979)	2.9.4.1.1 2.9.4.1.2 2.9.4.1.4

LBP-79-20 CONSUMERS POWER CO.

2.9.5.1
6.15.1.1

LBP-79-21 FLORIDA POWER AND LIGHT CO.
(TURKEY POINT NUCLEAR GENERATING UNITS 3 AND 4), 10 NRC 183 (1979)

2.5.3
2.9.3.3.3
2.9.5.5

LBP-79-22 CINCINNATI GAS AND ELECTRIC CO.
(WILLIAM H. ZIMMER NUCLEAR STATION), 10 NRC 213 (1979)

2.9.5.5

LBP-79-23 PHILADELPHIA ELECTRIC CO.
(FULTON GENERATING STATION, UNITS 1 AND 2), 10 NRC 220 (1979)

3.1.2.5
6.24
6.6

LBP-79-24 CINCINNATI GAS AND ELECTRIC CO.
(WILLIAM H. ZIMMER NUCLEAR STATION), 10 NRC 226 (1979)

3.1.2.1
3.1.2.2
6.13

LBP-79-27 HOUSTON LIGHTING AND POWER CO.
(SOUTH TEXAS PROJECT, UNITS 1 AND 2), 10 NRC 563 (1979)

3.1.2.2
3.17
6.3

LBP-79-4 FLORIDA POWER AND LIGHT CO.
(ST. LUCIE NUCLEAR PLANT, UNIT 2), 9 NRC 164 (1979)

2.11.2
6.3.3
6.3.3.1

LBP-79-5 HOUSTON LIGHTING AND POWER CO.
(SOUTH TEXAS PROJECT, UNITS 1 AND 2), 9 NRC 193 (1979)

2.11.2.6
2.11.5

LBP-79-6 PENNSYLVANIA POWER AND LIGHT CO.
(SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), 9 NRC 291 (1979)

2.9.5.10
2.9.5.4
6.15.6.1

LBP-79-6	PENNSYLVANIA POWER AND LIGHT CO.	6.9.1
LBP-79-7	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECT 2), 9 NRC 330 (1979)	2.9.4.1.2 2.9.4.1.4
LBP-80-14	CINCINNATI GAS AND ELECTRIC CO. (WILLIAM H. ZIMMER NUCLEAR STATION), 11 NRC 570 (1980)	2.9.3.3.3
LBP-80-15	PUERTO RICO ELECTRIC POWER AUTHORITY (NORTH COAST NUCLEAR PLANT, UNIT 1), 11 NRC 765 (1980)	2.9.10.1 3.1.2.2 3.5.1.1
LBP-80-17	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 11 NRC 893 (1980)	2.11.5.2
LBP-80-18	PENNSYLVANIA POWER AND LIGHT CO. (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), 11 NRC 906 (1980)	2.11.2.2 3.1.1 6.15.8.1
LBP-80-22	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 12 NRC 191 (1980)	2.9.4.1.4 6.1.4.2
LBP-80-26	DAIRYLAND POWER COOPERATIVE (LA CROSSE BOILING WATER REACTOR)), 12 NRC 367 (1980)	2.2 6.24.7 6.24.8
LBP-80-27	PUBLIC SERVICE ELECTRIC AND GAS CO. (SALEM NUCLEAR GENERATING STATION, UNIT 1), 12 NRC 435 (1980)	6.15
LBP-80-28	DUKE POWER CO. (AMENDMENT TO OCONEE SNM LICENSE), 12 NRC 459 (1980)	6.15.1.2

LBP-80-29 WISCONSIN ELECTRIC POWER CO.
(POINT BEACH NUCLEAR PLANT, UNIT 1), 12 NRC 581 (1980)

5.14

LBP-80-30 COMMONWEALTH EDISON CO.
(BYRON STATION, UNITS 1 AND 2), 12 NRC 683 (1980)

2.9.5.1
2.9.5.6
2.9.5.7
2.9.5.8
6.15.5

LBP-80-31 NORTHERN INDIANA PUBLIC SERVICE CO.
(BAILLY GENERATING STATION, NUCLEAR-1), 12 NRC 699 (1980)

3.4.5

LBP-80-7 COMMONWEALTH EDISON CO.
(ZION STATION, UNITS 1 AND 2), 11 NRC 245 (1980)

6.15.1.1

LBP-81-1 DUKE POWER CO.
(CATAWBA NUCLEAR STATION UNITS 1 AND 2), 13 NRC 27 (1981)

2.9.3.1
2.9.3.2
2.9.3.6
2.9.4.2

LBP-81-11 SOUTH CAROLINA ELECTRIC AND GAS CO.
(VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1), 13 NRC 420 (1981)

2.9.3.3.3

LBP-81-14 FLORIDA POWER AND LIGHT CO.
(TURKEY POINT PLANT, UNITS 3 AND 4), 13 NRC 677 (1981)

6.1.4.4
6.15.1.2
6.15.4

LBP-81-15 ILLINOIS POWER CO.
(CLINTON POWER STATION, UNITS 1 AND 2), 13 NRC 708 (1981)

3.4.1

LBP-81-18 LONG ISLAND LIGHTING CO.
(SHOREHAM NUCLEAR STATION, UNIT 1), 14 NRC 71 (1981)

3.4.1
6.14

LBP-81-2	CINCINNATI GAS AND ELECTRIC CO. (WILLIAM H. ZIMMER NUCLEAR STATION), 13 NRC 36 (1981)	3.5.3
LBP-81-23	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 14 NRC 159 (1981)	3.4.2
LBP-81-24	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 14 NRC 175 (1981)	2.9.4.1.1 3.17 3.4.1
LBP-81-25	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 14 NRC 241 (1981)	2.11.2 2.11.2.8 2.9.5
LBP-81-28	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT UNIT 2), 14 NRC 333 (1981)	6.3.2
LBP-81-29	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (UCLA RESEARCH REACTOR), 14 NRC 353 (1981)	3.13.2
LBP-81-30	FLORIDA POWER AND LIGHT CO. (TURKEY POINT PLANT, UNITS 3 AND 4), 14 NRC 357 (1981)	5.7.1
LBP-81-30-A	COMMONWEALTH EDISON CO. (BYRON STATION, UNITS 1 AND 2), 14 NRC 364 (1981)	2.11.1 2.11.4 2.9.3 3.1.2.2
LBP-81-31	DAIRYLAND POWER COOPERATIVE (LA CROSSE BOILING WATER REACTOR), N/A), 14 NRC 375 (1981)	3.3.6
LBP-81-34	HOUSTON LIGHTING AND POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNIT 1), 14 NRC 637 (1981)	3.5

LBP-81-35 CLEVELAND ELECTRIC ILLUMINATING CO.
(PERRY NUCLEAR PLANT, UNITS 1 AND 2), 14 NRC 682 (1981)

2.11.4
2.9.3.3.3
2.9.5.3
2.9.9.2.2
3.7.3.2

LBP-81-36 SOUTHERN CALIFORNIA EDISON CO.
(SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), 14 NRC 691 (1981)

3.1.2.3
3.4.2
5.14

LBP-81-39 WISCONSIN ELECTRIC POWER CO.
(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 14 NRC 819 (1981)

3.1.2.4

LBP-81-42 CLEVELAND ELECTRIC ILLUMINATING CO.
(PERRY NUCLEAR PLANT, UNITS 1 AND 2), 14 NRC 842 (1981)

2.9.5.7

LBP-81-44 WISCONSIN ELECTRIC POWER CO.
(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 14 NRC 850 (1981)

3.1.2.4

LBP-81-45 WISCONSIN ELECTRIC POWER CO.
(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 14 NRC 853 (1981)

3.1.2.4
3.4.1

LBP-81-46 WISCONSIN ELECTRIC POWER CO.
(POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 14 NRC 862 (1981)

3.1.2.4

LBP-81-48 LOUISIANA POWER AND LIGHT CO.
(WATERFORD STEAM ELECTRIC STATION, UNIT 3), 14 NRC 877 (1981)

3.5
3.5.3

LBP-81-5 PACIFIC GAS AND ELECTRIC CO.
(DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2), 13 NRC 226 (1981)

3.4.1
4.4
4.4.2
6.15.1.1

LBP-81-50	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1)), 14 NRC 888 (1981)	6.11 6.23 6.23.1
LBP-81-51	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 14 NRC 896 (1981)	2.9.5.7
LBP-81-52	COMMONWEALTH EDISON CO. (BYRON STATION, UNITS 1 AND 2), 14 NRC 901 (1981)	2.11.4
LBP-81-54	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 14 NRC 918 (1981)	3.1.2.5 3.4.2
LBP-81-55	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 14 NRC 1017 (1981)	3.3.7 3.4.1 3.5.3 6.23.3.1
LBP-81-57	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR PLANT, UNITS 1 AND 2), 14 NRC 1037 (1981)	6.21.2
LBP-81-58	FLORIDA POWER AND LIGHT CO. (ST. LUCIE NUCLEAR PLANT, UNIT 2), 14 NRC 1167 (1981)	3.17
LBP-81-6	NORTHERN INDIANA PUBLIC SERVICE CO. (BAILLY GENERATING STATION, NUCLEAR-1), 13 NRC 253 (1981)	3.4.5
LBP-81-60	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1)), 14 NRC 1724 (1981)	3.4.1
LBP-81-61	ILLINOIS POWER CO. (CLINTON POWER STATION, UNIT 1), 14 NRC 1735 (1981)	2.11.2.1 2.11.4 2.9.3.1

LBP-81-62	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 14 NRC 1747 (1981)	6.23
LBP-81-63	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 14 NRC 1768 (1981)	2.11.2.6 3.12 6.5.4.1
LBP-81-7	DAIRYLAND POWER COOPERATIVE (LA CROSSE BOILING WATER REACTOR), 13 NRC 257 (1981)	6.24.5
LBP-81-8	PENNSYLVANIA POWER AND LIGHT CO. AND ALLEGHENY ELECTRIC COOPERATIVE INC. (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2), 13 NRC 335 (1981)	3.5 3.5.2.3 3.5.3
LBP-82-1	CONSOLIDATED EDISON CO. OF N.Y. (INDIAN POINT STATION, UNIT NO. 2), 15 NRC 37 (1982)	1.7.1 2.9.3.3.3
LBP-82-1A	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 15 NRC 43 (1982)	2.9.5.7 6.9.1
LBP-82-10	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 15 NRC 341 (1982)	2.11.5.2 3.7.2
LBP-82-100	LOUISIANA POWER AND LIGHT CO. (WATERFORD STEAM ELECTRIC STATION, UNIT 3), 16 NRC 1550 (1982)	6.15.3 6.9.1
LBP-82-101	CONSUMERS POWER CO. (PALISADES NUCLEAR POWER FACILITY), 16 NRC 1594 (1982)	2.9.9.5
LBP-82-102	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 16 NRC 1597 (1982)	2.11.2.2

LBP-82-103	ILLINOIS POWER CO. (CLINTON POWER STATION, UNIT NO.1), 16 NRC 1603 (1982)	2.10.2 2.9.5.7 3.4 6.10 6.8
LBP-82-105	CONSOLIDATED EDISON CO. OF N.Y.; POWER AUTHORITY OF THE STATE OF N.Y. (INDIAN POINT, UNIT NO.2); (INDIAN POINT, UNIT NO.3), 16 NRC 1629 (1982)	2.9.5 3.4 6.20.3
LBP-82-106	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 16 NRC 1649 (1982)	2.9.3.1 2.9.3.2 2.9.5 2.9.5.3 2.9.5.7 4.5 5.12.2.1 6.15.7
LBP-82-107	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 16 NRC 1667 (1982)	3.1.2.7 3.13.1
LBP-82-107A	DUKE POWER CO. (CATAWBA NUCLEAR STATION, UNITS 1 AND 2), 16 NRC 1791 (1982)	3.17 6.9.1
LBP-82-108	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNIT 1), 16 NRC 1811 (1982)	2.9.5 2.9.9.5 3.6
LBP-82-11	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 15 NRC 348 (1982)	2.9.5.5 2.9.5.7
LBP-82-113	CONSOLIDATED EDISON CO. OF N.Y.; POWER AUTHORITY OF THE STATE OF N.Y. (INDIAN POINT, UNIT NO.2); (INDIAN POINT, UNIT NO.3), 16 NRC 1907 (1982)	2.11.3

LBP-82-114	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 16 NRC 1909 (1982)	3.1.2.5 3.5
LBP-82-115	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 16 NRC 1923 (1982)	2.11.5.2 2.9.9.5 3.1.2.1 3.1.2.7 6.17.1
LBP-82-116	DUKE POWER CO. (CATAWBA NUCLEAR STATION, UNITS 1 AND 2), 16 NRC 1937 (1982)	2.11.1 2.11.2 2.11.2.4 2.11.2.5 2.11.2.8 2.11.5 2.9.3.1 2.9.5 3.5.2.1
LBP-82-117A	ARIZONA PUBLIC SERVICE CO. (PALO VERDE NUCLEAR GENERATING STATION, UNITS 1, 2 AND 3), 16 NRC 1964 (1982)	3.1.2.1 3.1.2.6 6.15 6.15.1.2 6.15.6
LBP-82-117B	ARIZONA PUBLIC SERVICE CO. (PALO VERDE NUCLEAR GENERATING STATION, UNITS 1, 2 AND 3), 16 NRC 2024 (1982)	2.9.3 2.9.3.3.3 4.4.2
LBP-82-118	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 16 NRC 2034 (1982)	6.21
LBP-82-119A	CAROLINA POWER AND LIGHT CO. AND NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY (SHEARON HARRIS NUCLEAR POWER PLANT, UNITS 1 AND 2), 16 NRC 2069 (1982)	2.9.1 2.9.5.1 2.9.5.6 6.20.4 6.5.3.2

LBP-82-12	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 15 NRC 354 (1982)	3.1.1 3.1.2.3
LBP-82-12A	CONSOLIDATED EDISON CO. OF N.Y.; POWER AUTHORITY OF THE STATE OF N.Y. (INDIAN POINT UNIT NO. 2); (INDIAN POINT UNIT NO. 3), 15 NRC 515 (1982)	3.1.2.4
LBP-82-12B	CONSOLIDATED EDISON CO. OF N.Y.; POWER AUTHORITY OF THE STATE OF N.Y. (INDIAN POINT UNIT NO. 2); (INDIAN POINT UNIT NO. 3), 15 NRC 523 (1982)	3.1.2.4
LBP-82-14	GENERAL ELECTRIC CO. (GE MORRIS OPERATION SPENT FUEL STORAGE FACILITY), 15 NRC 530 (1982)	3.5.2
LBP-82-15	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 15 NRC 555 (1982)	2.9.5.5 2.9.5.7
LBP-82-17	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS AND 2), 15 NRC 593 (1982)	3.5.2
LBP-82-18	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS AND 2), 15 NRC 598 (1982)	2.11.1
LBP-82-19	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 15 NRC 601 (1982)	2.10.2 6.9.2.1
LBP-82-19A	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 15 NRC 623 (1982)	3.1.2.4
LBP-82-19B	CONSUMERS POWER CO. (BIG ROCK POINT PLANT), 15 NRC 627 (1982)	3.1.2.3 3.5.2

LBP-82-2	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 15 NRC 48 (1982)	3.1.2.7 6.23
LBP-82-21	FLORIDA POWER AND LIGHT CO. (ST. LUCIE PLANT, UNIT NO. 2), 15 NRC 639 (1982)	6.3
LBP-82-23	CONSOLIDATED EDISON CO. OF N.Y.; POWER AUTHORITY OF THE STATE OF N.Y. (INDIAN POINT, UNIT NO. 2); (INDIAN POINT, UNIT NO. 3), 15 NRC 647 (1982)	3.1.2.1 5.14
LBP-82-24	ARMED FORCES RADIOBIOLOGY RESEARCH INSTITUTE (COBALT-60 STORAGE FACILITY), 15 NRC 652 (1982)	2.9.3.3.3 2.9.4.1.2
LBP-82-24A	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 15 NRC 661 (1982)	3.1.2.3
LBP-82-25	CONSOLIDATED EDISON CO. OF N.Y.; POWER AUTHORITY OF THE STATE OF N.Y. (INDIAN POINT UNIT NO. 2); (INDIAN POINT UNIT NO. 3), 15 NRC 715 (1982)	2.10.2 2.9.4.1.2
LBP-82-26	PUGET SOUND POWER AND LIGHT CO. (SKAGIT/HANFORD NUCLEAR POWER PROJECT, UNITS 1 AND 2), 15 NRC 74 (1982)	2.9.4.1.1
LBP-82-3	SOUTHERN CALIFORNIA EDISON CO. (SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3), 15 NRC 61 (1982)	3.17
LBP-82-33	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 15 NRC 887 (1982)	6.23
LBP-82-34A	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT NO.), 15 NRC 914 (1982)	3.14.2
LBP-82-36	NUCLEAR FUEL SERVICES, INC. AND N.Y.S. ENERGY RESEARCH AND DEVELOPMENT AUTHORITY (WESTERN NEW YORK NUCLEAR SERVICE CENTER), 15 NRC 1075 (1982)	2.9.4.1.1

LBP-82-36	NUCLEAR FUEL SERVICES, INC. AND N.Y.S. ENERGY RESEARCH AND DEVELOPMENT AUTHORIT	2.9.4.1.4 3.1.2.5
LBP-82-4	MAINE YANKEE ATOMIC POWER CO. (MAINE YANKEE ATOMIC POWER STATION), 15 NRC 199 (1982)	2.9.3.1 2.9.3.3.3
LBP-82-41	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION UNIT 1), 15 NRC 129 (1982)	3.4.5
LBP-82-42	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 15 NRC 130 (1982)	6.23.3.1
LBP-82-43A	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 15 NRC 142 (1982)	2.9.3 2.9.4.1.1 2.9.4.1.2 2.9.4.2 3.4.1 6.15 6.15.1
LBP-82-45	ARIZONA PUBLIC SERVICE CO. (PALO VERDE NUCLEAR GENERATING STATION, UNIT 1, 2 AND 3), 15 NRC 152 (1982)	6.15.8
LBP-82-46	SOUTHERN CALIFORNIA EDISON CO. (SAN ONOFRE NUCLEAR GENERATING STATION, UNIT 2 AND 3), 17 NRC 153 (1982)	3.14.2
LBP-82-47	CINCINNATI GAS AND ELECTRIC CO. (WM. H. ZIMMER NUCLEAR POWER STATION, UNIT 1), 15 NRC 153 (1982)	2.11.2.2
LBP-82-48	CINCINNATI GAS AND ELECTRIC CO. (WM. H. ZIMMER NUCLEAR POWER STATION, UNIT 1), 15 NRC 154 (1982)	4.2.2
LBP-82-5	COMMONWEALTH EDISON CO. (BRYON STATION, UNITS 1 AND 2), 15 NRC 209 (1982)	2.11.5.2

LBP-82-5A	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 15 NRC 216 (1982)	3.1.1 3.1.2.3 3.1.2.4 6.23.3 6.4.1.1
LBP-82-51	DUKE POWER CO. (CATAWBA NUCLEAR STATION, UNITS 1 AND 2), 16 NRC 167 (1982)	2.9.5.9
LBP-82-51A	CONSUMERS POWER CO. (BIG ROCK POINT PLANT), 16 NRC 180 (1982)	4.2
LBP-82-52	COMMONWEALTH EDISON CO. (DRESDEN NUCLEAR POWER STATION, UNIT 1), 16 NRC 183 (1982)	2.9.4.1.1 2.9.4.1.2 2.9.5.1
LBP-82-53	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 16 NRC 196 (1982)	2.9.3.3.3 5.18
LBP-82-54	CINCINNATI GAS AND ELECTRIC CO. (ZIMMER NUCLEAR POWER STATION, UNIT 1), 16 NRC 210 (1982)	2.9.3.3.3 2.9.4.1.2 3.14.2
LBP-82-56	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1)), 16 NRC 281 (1982)	3.1.2.1 6.11
LBP-82-58	DAIRYLAND POWER COOPERATIVE (LA CROSSE BOILING WATER REACTOR), 16 NRC 512 (1982)	3.5 3.5.1 3.5.2 3.5.3 6.15.4 6.15.5 6.15.6 6.15.7

LBP-82-59	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 16 NRC 533 (1982)	2.11.2.4
LBP-82-6	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 15 NRC 281 (1982)	3.1.1 3.1.2.3 4.5
LBP-82-62	ARIZONA PUBLIC SERVICE CO. (PALO VERDE NUCLEAR GENERATING STATION, UNITS 1, 2 AND 3), 16 NRC 565 (1982)	5.12.2.1
LBP-82-63	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 16 NRC 571 (1982)	2.9.3.1 2.9.3.3.3 2.9.5.5 6.15.6 6.21 6.8
LBP-82-67	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 16 NRC 734 (1982)	2.11.2.2 2.11.2.8
LBP-82-69	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT), 16 NRC 751 (1982)	3.1.2.1
LBP-82-72	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 16 NRC 968 (1982)	6.14 6.15.8 6.15.8.4
LBP-82-73	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 16 NRC 974 (1982)	3.1.2.7
LBP-82-74	PUGET SOUND POWER AND LIGHT CO. (SKAGIT/HANFORD NUCLEAR POWER PROJECT, UNITS 1 AND 2), 16 NRC 981 (1982)	2.9.3 2.9.3.3 2.9.3.3.3 2.9.4.1.1

LBP-82-74	PUGET SOUND POWER AND LIGHT CO.	2.9.4.1.2
LBP-82-75	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 16 NRC 986 (1982)	2.9.5 2.9.5.1
LBP-82-76	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 16 NRC 102 (1982)	1.7.1 2.10.2 2.9.5.1 3.1.2.1.1 3.17 6.15.1.1
LBP-82-77	CONSUMERS POWER CO. (BIG ROCK POINT PLANT), 16 NRC 109 (1982)	3.7
LBP-82-78	CONSUMERS POWER CO. (BIG ROCK POINT PLANT), 16 NRC 110 (1982)	6.15.1.1
LBP-82-79	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 16 NRC 111 (1982)	2.9.5.5 3.1.2.3
LBP-82-8	CONSUMERS POWER CO. (BIG ROCK POINT PLANT), 15 NRC 299 (1982)	2.2 3.5 3.5.2.1 6.5.1
LBP-82-80	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 16 NRC 112 (1982)	6.23.3.2
LBP-82-81	DUKE POWER CO. (PERKINS NUCLEAR STATION, UNITS 1, 2 AND 3), 16 NRC 112 (1982)	1.9

LBP-82-82	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 16 NRC 114 (1982)	2.11.2.4 2.11.2.5 2.11.2.6 2.11.4
LBP-82-84	SOUTH CAROLINA ELECTRIC AND GAS CO. (VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1)), 16 NRC 118 (1982)	3.1.2.1 4.4.2 5.7.1
LBP-82-86	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT NO), 16 NRC 119 (1982)	3.1.2.1
LBP-82-87	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS AND 2), 16 NRC 119 (1982)	2.2 3.1.2 6.4.2
LBP-82-88	WISCONSIN ELECTRIC POWER CO. (POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2), 16 NRC 1335 (1982)	3.7.2
LBP-82-89	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 16 NRC 1355 (1982)	2.9.5.5
LBP-82-9	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 15 NRC 339 (1982)	3.1.2.3
LBP-82-90	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 16 NRC 1359 (1982)	2.9.5.5
LBP-82-91	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 16 NRC 1364 (1982)	2.9.5.5 6.16.1
LBP-82-92	MISSISSIPPI POWER AND LIGHT CO. (GRAND GULF NUCLEAR STATION, UNITS 1 AND 2), 16 NRC 1376 (1982)	2.9.3.3 3.1.2.1

LBP-82-92	MISSISSIPPI POWER AND LIGHT CO.	6.20.4
LBP-82-93	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (UCLA RESEARCH REACTOR), 16 NRC 1391 (1982)	3.5.2
LBP-82-95	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 16 NRC 1401 (1982)	6.15.6
LBP-82-96	DETROIT EDISON CO. (ENRICO FERMI ATOMIC POWER PLANT, UNIT 2), 16 NRC 1408 (1982)	2.9.3.3.3
LBP-82-98	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 16 NRC 1459 (1982)	2.9.5
LBP-83-11	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 17 NRC 413 (1983)	6.15.6 6.15.8 6.15.8.5
LBP-83-12	CINCINNATI GAS AND ELECTRIC CO. (WM. H. ZIMMER NUCLEAR POWER STATION, UNIT 1), 17 NRC 466 (1983)	3.1.2.1
LBP-83-13	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 17 NRC 469 (1983)	2.10.2
LBP-83-15	NUCLEAR FUEL SERVICES, INC. AND N.Y.S. ENERGY RESEARCH AND DEVELOPMENT AUTHORITY (WESTERN NEW YORK NUCLEAR SERVICE CENTER), 17 NRC 476 (1983)	3.1.2.1
LBP-83-16	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECT NO. 1), 17 NRC 479 (1983)	2.11.2.5 2.9.4.1.2 6.23.3.1
LBP-83-17	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 17 NRC 490 (1983)	2.11.2

LBP-83-17	PUBLIC SERVICE CO. OF NEW HAMPSHIRE	2.11.2.4 2.11.2.6 2.11.2.8
LBP-83-18	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 17 NRC 501 (1983)	6.17.1
LBP-83-19	GENERAL ELECTRIC CO. (GETR VALLECITOS), 17 NRC 573 (1983)	2.5 2.9.3 2.9.4 2.9.5
LBP-83-2	PACIFIC GAS AND ELECTRIC CO. (STANISLAUS NUCLEAR PROJECT, UNIT 1), 17 NRC 45 (1983)	1.9
LBP-83-20A	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 17 NRC 586 (1983)	2.11.5.2 3.7.2
LBP-83-21	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 17 NRC 593 (1983)	3.1.2.7 5.12.2
LBP-83-22	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 17 NRC 608 (1983)	6.16.2 6.20.3
LBP-83-25	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 17 NRC 681 (1983)	3.1.2.1. 5.6.1 5.8.10
LBP-83-26	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 17 NRC 945 (1983)	2.10.2

LBP-83-27A	CAROLINA POWER AND LIGHT CO. AND NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY (SHEARON HARRIS NUCLEAR POWER PLANT, UNITS 1 AND 2), 17 NRC 971 (1983)	6.15.6
LBP-83-28	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 17 NRC 987 (1983)	2.9.9 2.9.9.2.2 3.13
LBP-83-29	CONSOLIDATED EDISON CO. OF N.Y.; POWER AUTHORITY OF THE STATE OF N.Y. (INDIAN POINT, UNIT 2); (INDIAN POINT, UNIT 3), 17 NRC 1117 (1983)	3.13
LBP-83-29A	DUKE POWER CO. (CATAWBA NUCLEAR STATION, UNITS 1 AND 2), 17 NRC 1121 (1983)	2.11.5.2
LBP-83-3	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 17 NRC 59 (1983)	3.5.2.3 3.5.3
LBP-83-30	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 17 NRC 1132 (1983)	2.10.2 2.9.5.5 3.14.2 3.4.4 4.3 4.4 4.4.1
LBP-83-32A	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 17 NRC 1170 (1983)	3.5.2.3 3.5.3
LBP-83-33	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 18 NRC 27 (1983)	3.1.1
LBP-83-34	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 18 NRC 36 (1983)	3.17

LBP-83-36	ARIZONA PUBLIC SERVICE CO. (PALO VERDE NUCLEAR GENERATING STATION, UNITS 2 AND 3), 18 NRC 45 (1983)	1.8 3.1.2.1 3.1.2.5 6.15.1.1 6.15.3 6.16.1
LBP-83-37	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 18 NRC 52 (1983)	2.9.5.5 6.8
LBP-83-38	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 18 NRC 61 (1983)	6.13 6.15.1.1
LBP-83-39	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 18 NRC 67 (1983)	1.8 2.5.5.5 2.9.5.8 3.0 3.4
LBP-83-40	COMMONWEALTH EDISON CO. (BYRON NUCLEAR POWER STATION, UNITS 1 AND 2), 18 NRC 93 (1983)	3.11.1.5 6.23.1
LBP-83-41	COMMONWEALTH EDISON CO. (BYRON NUCLEAR POWER STATION, UNITS 1 AND 2), 18 NRC 104 (1983)	3.14.2 4.4.1 4.4.2
LBP-83-42	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 18 NRC 112 (1983)	2.9.3.3.1 2.9.5.5
LBP-83-45	NIAGARA MOHAWK POWER CORP. (NINE MILE POINT NUCLEAR STATION, UNIT 2), 18 NRC 213 (1983)	2.10.2 2.9.4.1 2.9.4.1.1

LBP-83-46	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 18 NRC 218 (1983)	3.5.3
LBP-83-49	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 18 NRC 239 (1983)	6.20.4
LBP-83-5	CONSOLIDATED EDISON CO. OF N.Y.; POWER AUTHORITY OF THE STATE OF N.Y. (INDIAN POINT UNIT 2); (INDIAN POINT UNIT 3), 17 NRC 134 (1983)	2.9.5
LBP-83-52	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 18 NRC 256 (1983)	3.1.2
LBP-83-52A	GULF STATES UTILITIES CO. (RIVER BEND STATION, UNITS 1 AND 2), 18 NRC 265 (1983)	2.9.9.2.2
LBP-83-53	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 18 NRC 282 (1983)	2.11.2 2.11.2.4
LBP-83-55	TEXAS UTILITIES GENERATING CO. (UNITS 1 AND 2), 18 NRC 415, (1983)	3.14 3.14.2
LBP-83-57	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 18 NRC 445 (1983)	1.8 2.9.9 3.1.2.5 3.11.2 3.14.2 3.16 3.8.1 6.15.1.1 6.15.6 6.9.1 6.9.2.2
LBP-83-58	CINCINNATI GAS AND ELECTRIC CO. (WILLIAM H. ZIMMER NUCLEAR POWER STATION, UNIT 1), 18 NRC 640 (1983)	2.9.5.5 3.1.2.1

LBP-83-59	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECT 1), 18 NRC-667 (1983)	2.9.3
LBP-83-61	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 18 NRC 700 (1983)	2.11.3 3.11.1.5
LBP-83-62	CONSUMERS POWER CO. (BIG ROCK POINT PLANT), 18 NRC 708 (1983)	3.1.2.1
LBP-83-64	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 18 NRC 766 (1983)	2.11.2 2.11.2.4
LBP-83-65	ROCKWELL INTERNATIONAL CORP. (ENERGY SYSTEMS GROUP SPECIAL NUCLEAR MATERIALS LICENSE NO. SNM-21), 18 NRC 774 (1983)	2.2 2.9.4.1.1 6.13
LBP-83-66	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECT NO. 1), 18 NRC 780 (1983)	2.9.5.3 2.9.5.5
LBP-83-70	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 18 NRC 1094 (1983)	2.11.2.4
LBP-83-71	UNION ELECTRIC CO. (CALLAWAY PLANT, UNIT 1), 18 NRC 1105 (1983)	1.8
LBP-83-72	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 18 NRC 1221 (1983)	2.11.2.4
LBP-83-73	ROCHESTER GAS AND ELECTRIC CORP. (R.E. GINNA NUCLEAR PLANT, UNIT 1), 18 NRC 1231 (1983)	2.5.4 2.9.10.1

LBP-83-75A	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 18 NRC 1260 (1983)	2.9.5 2.9.5.1 2.9.5.5
LBP-83-76	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT NO. 1), 18 NRC 1266 (1983)	2.9.5.1 2.9.5.3 2.9.5.6 2.9.5.7 3.4
LBP-83-77	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 18 NRC 1365 (1983)	5.4
LBP-83-79	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 18 NRC 1400 (1983)	2.11.1
LBP-83-8	U.S. DEPT. OF ENERGY, PROJECT MANAGEMENT CORP., TENNESSEE VALLEY AUTHORITY (CLINCH RIVER BREEDER REACTOR PLANT), 17 NRC 158 (1983)	6.19.2
LBP-83-8A	DUKE POWER CO. (CATAWBA NUCLEAR STATION, UNITS 1 AND 2), 17 NRC 282 (1983)	3.3.1
LBP-83-80	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 18 NRC 1404 (1983)	2.9.3.3.3 2.9.5.5
LBP-83-81	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 18 NRC 1410 (1983)	3.12.4 4.2
LBP-83-9	PUBLIC SERVICE CO. OF NEW HAMPSHIRE (SEABROOK STATION, UNITS 1 AND 2), 17 NRC 403 (1983)	2.10.2
LBP-84-1	KANSAS GAS AND ELECTRIC CO. (WOLF CREEK GENERATING STATION, UNIT 1), 19 NRC 29 (1984)	2.9.5

LBP-84-1	KANSAS GAS AND ELECTRIC CO.	2.9.5.1 2.9.5.5
LBP-84-10	TEXAS UTILITIES ELECTRIC CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 19 NRC 509 (1984)	3.12.4 4.2 4.3.1 5.12.1
LBP-84-13	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 19 NRC 659 (1984)	3.7.3.7
LBP-84-15	CAROLINA POWER AND LIGHT CO. AND NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY (SHEARON HARRIS NUCLEAR PLANT, UNITS 1 AND 2), 19 NRC 837 (1984)	3.1.2.5 3.12.3 3.5.2.3 3.5.3
LBP-84-16	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 19 NRC 857 (1984)	3.1.2.1 3.4.1 6.13
LBP-84-17	KANSAS GAS AND ELECTRIC CO. (WOLF CREEK GENERATING STATION, UNIT 1), 19 NRC 878 (1984)	2.9.3.3
LBP-84-17A	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECT NO. 3), 19 NRC 1011 (1984)	2.9.3.3.3
LBP-84-18	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 19 NRC 1020 (1984)	2.9.5.8
LBP-84-19	MISSISSIPPI POWER AND LIGHT CO. (GRAND GULF NUCLEAR STATION, UNIT 1), 19 NRC 1076 (1984)	6.1.4
LBP-84-2	COMMONWEALTH EDISON CO. (BYRON NUCLEAR POWER STATION, UNITS 1 AND 2), 19 NRC 36 (1984)	3.1.2.5

LBP-84-2	COMMONWEALTH EDISON CO.	6.16.1.3
LBP-84-20	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 19 NRC 1285 (1984)	1.5.2 2.9.5.4 2.9.5.5 3.7.3.7 4.4.2
LBP-84-22	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (UCLA RESEARCH REACTOR), 19 NRC 1383 (1984)	1.5.2 6.4.1
LBP-84-23	MISSISSIPPI POWER AND LIGHT CO. (GRAND GULF NUCLEAR STATION, UNIT 1), 19 NRC 1412 (1984)	6.1.4
LBP-84-24	DUKE POWER CO. (CATAWBA NUCLEAR STATION, UNITS 1 AND 2), 19 NRC 1418 (1984)	2.11.1 3.13.1
LBP-84-25	TEXAS UTILITIES ELECTRIC CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 19 NRC 1589 (1984)	3.5
LBP-84-26	KANSAS GAS AND ELECTRIC CO. (WOLF CREEK GENERATING STATION, UNIT 1), 20 NRC 53 (1984)	3.4.2 4.2.2 6.16.1.3
LBP-84-28	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 20 NRC 129 (1984)	2.9.5.1
LBP-84-29A	SUFFOLK COUNTY AND NYS MOTION FOR DISQUALIFICATION OF CHIEF AJ COTTER (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 20 NRC 385 (1984)	3.1.4.1
LBP-84-3	CLEVELAND ELECTRIC ILLUMINATING CO. (PERRY NUCLEAR POWER PLANT, UNITS 1 AND 2), 19 NRC 282 (1984)	3.14.2 4.4.1

LBP-84-30	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 20 NRC 426 (1984)	2.9.5.5
LBP-84-31	PHILADELPHIA ELECTRIC CO. (LIMERICK GENERATING STATION, UNITS 1 AND 2), 20 NRC 446 (1984)	6.15.3
LBP-84-33	CINCINNATI GAS AND ELECTRIC CO. (WILLIAM H. ZIMMER NUCLEAR POWER STATION, UNIT 1), 20 NRC 765 (1984)	1.9
LBP-84-35	GEORGIA POWER CO. (ALVIN W. VOGTLE NUCLEAR PLANT, UNITS 1 AND 2), 20 NRC 887 (1984)	2.9.5.1 3.7.3.2 6.20.4 6.8
LBP-84-39	MISSISSIPPI POWER AND LIGHT CO. (GRAND GULF NUCLEAR STATION, UNIT 1), 20 NRC 1031 (1984)	6.1.4
LBP-84-40A	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA POWER STATION, UNITS 1 AND 2), 20 NRC 1195 (1984)	2.9.5.3
LBP-84-42	KERR-MCGEE CORP. (WEST CHICAGO RARE EARTHS FACILITY), 20 NRC 1296 (1984)	3.1.2.1 3.4 6.15.6
LBP-84-43	PHILADELPHIA ELECTRIC CO. (FULTON GENERATING STATION, UNITS 1 AND 2), 20 NRC 1333 (1984)	1.9
LBP-84-45	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 20 NRC 1343 (1984)	6.19
LBP-84-47	METROPOLITAN EDISON CO. (THREE MILE ISLAND NUCLEAR STATION, UNIT 1), 20 NRC 1405 (1984)	4.2.2

LBP-84-50	TEXAS UTILITIES GENERATING CO. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2), 20 NRC 1464 (1984)	2.11.2.4
LBP-84-53	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 20 NRC 1531 (1984)	5.19.3 6.5.4.1
LBP-84-54	GENERAL ELECTRIC CO. (GETR VALLECITOS), 20 NRC 1637 (1984)	2.9.3.3.3 3.6
LBP-84-6	DUQUESNE LIGHT CO. (BEAVER VALLEY POWER STATION, UNIT 2), 19 NRC 393 (1984)	2.10.2 2.9.4.1.1 2.9.4.1.2 2.9.5.1 2.9.5.7
LBP-84-7	CAROLINA POWER AND LIGHT CO. AND NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY (SHEARON HARRIS NUCLEAR PLANT, UNITS 1 AND 2), 19 NRC 432 (1984)	3.1.2.5 3.12.3 3.5.2.3 3.5.3
LBP-84-9	WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS NUCLEAR PROJECT NO. 1), 19 NRC 497 (1984)	3.4.5
LBP-85-1	KERR-MCGEE CORP. (WEST CHICAGO RARE EARTHS FACILITY), 21 NRC 11 (1985)	2.11.2 2.11.2.4
LBP-85-11	COMMONWEALTH EDISON CO. (BRAIDWOOD NUCLEAR POWER STATION, UNITS 1 AND 2), 21 NRC 609 (1985)	2.9.5 2.9.5.1 2.9.5.5 3.17 6.5.4.1
LBP-85-12	LONG ISLAND LIGHTING CO. (SHOREHAM NUCLEAR POWER STATION, UNIT 1), 21 NRC 644 (1985)	1.8

LBP-85-12	LONG ISLAND LIGHTING CO.	3.1.2.6
LBP-85-19	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 21 NRC 1707 (1985)	4.4.1.1 4.4.2 5.6.1 6.4.2.3
LBP-85-2	CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2), 21 NRC 24 (1985)	2.9.9.3 2.9.9.4
LBP-85-20	COMMONWEALTH EDISON CO. (BRAIDWOOD NUCLEAR POWER STATION, UNITS 1 AND 2), 21 NRC 1732 (1985)	2.9.5 2.9.5.1 2.9.5.4 3.13.1
LBP-85-3	KERR-MCGEE CORP. (WEST CHICAGO RARE EARTHS FACILITY), 21 NRC 244 (1985)	5.12.2 6.15.3 6.16.1
LBP-85-4	GENERAL ELECTRIC CO. (GETR VALLECITOS), 21 NRC 399 (1985)	3.17 3.5
LBP-85-6	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 21 NRC 447 (1985)	6.5.4.1
LBP-85-7	U.S. DEPT. OF ENERGY, PROJECT MANAGEMENT CORP., TENNESSEE VALLEY AUTHORITY (CLINCH RIVER BREEDER REACTOR PLANT), 21 NRC 507 (1985)	1.9
LBP-85-8	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 21 NRC 516 (1985)	3.1.2.3

LBP-85-9	HOUSTON LIGHTING AND POWER CO. (SOUTH TEXAS PROJECT, UNITS 1 AND 2), 21 NRC 524 (1985)	2.9.5.5
N/A	BALTIMORE GAS AND ELECTRIC CO. (CALVERT CLIFFS NUCLEAR POWER PLANT, UNITS 1 AND 2), 2AELR 11,57 (1969)	6.20.3
	LONG ISLAND LIGHTING CO. (JAMESPORT NUCLEAR STATION, UNITS 1 AND 2), 2CCH NRR 30 (1976)	3.6
	NORTHERN STATES POWER CO. (MONTICELLO PLANT, UNIT 1), 4 AEC 440 (1970)	2.11.2.4 6.23.3.1
	OFFSHORE POWER SYSTEMS (UNPUBL. ASLB ORDER (FLOATING NUCLEAR POWER PLANTS)), UNPUBL. ASL (1978)	6.15.1.2
	PUGET SOUND POWER AND LIGHT CO. (SKAGIT NUCLEAR PROJECT, UNITS 1 AND 2), UNREPORTED (1980)	2.9.3.3.4
	VIRGINIA ELECTRIC AND POWER CO. (NORTH ANNA NUCLEAR STATION, UNITS 1 AND 2), UNPUBL. DEC (1976)	2.9.2

CCCCCCCCC		FFFFFFFFF	RRRRRRRRR
CCCCCCCCC		FFFFFFFFF	RRRRRRRRR
CC	CC	FF	RR RR
CC		FF	RR RR
CC		FF	RR RR
CC		FFFFFFFFF	RRRRRRRRR
CC		FFFFFFFFF	RRRRRRRRR
CC		FF	RR RR
CC		FF	RR RR
CC	CC	FF	RR RR
CCCCCCCCC		FF	RR RR
CCCCCCCCC		FF	RR RR

IIIIIIIII	NN	NN	DDDDDDDD	EEEEEEEEEE	XX	XX
IIIIIIIII	NNN	NN	DDDDDDDDDD	EEEEEEEEEE	XAX	XXX
II	NNNN	NN	DD DD	EE	XXX	XXX
II	NN NN	NN	DD DD	EE	XXX	XXX
II	NN NN	NN	DD DD	EE	XXXXXX	
II	NN NN	NN	DD DD	EEEEEEEE	XXAX	
II	NN NN	NN	DD DD	EEEEEEEE	XXXX	
II	NN NN NN	NN	DD DD	EE	XXXXXX	
II	NN NNNN	NN	DD DD	EE	XXX	XXX
II	NN NNN	NN	DD DD	EE	XXX	XXX
IIIIIIIII	NN	NN	DDDDDDDDDD	EEEEEEEEEE	XX	XXX
IIIIIIIII	NN	N	DDDDDDDD	EEEEEEEEEE	XX	XX

10 CFR APP. A	3.1.2.5 3.12.3
10 CFR PART 2, APP. A, IV	3.13.1
10 CFR PART 2, APP. A, V	3.1.2.7
10 CFR PART 40	6.13
10 CFR PART 50	2.11.2.2 3.1.2.2 6.19
10 CFR PART 51	3.4.1 6.1 6.15.1 6.15.1.2 6.15.6 6.6
10 CFR PART 70	2.11.2.2 3.1.2.2 3.8.11 6.13
10 CFR 0.735-27	3.1.2.7
10 CFR 1.32(F)	5.4
10 CFR 2.101	1.4.1
10 CFR 2.101(A)(1)	6.5.3.1
10 CFR 2.101(A)(2)	1.4.1
10 CFR 2.101(A)(3)	1.6
10 CFR 2.101(A-1)	1.3 6.6
10 CFR 2.102	1.8
10 CFR 2.102(A)	6.5.3.1
10 CFR 2.102(D)(3)	2.9.3.3.1 3.1.2.1
10 CFR 2.103(B)	6.16.1
10 CFR 2.104	3.1.2.1 6.15.1
10 CFR 2.104(A)	1.7.1 2.5.3 3.1.2.1.1 3.3.1

10 CFR 2.104(A)	3.3.1.1 3.4
10 CFR 2.104(B)(2)	3.1.1 3.1.2
10 CFR 2.104(B)(3)	3.1.1 3.1.2
10 CFR 2.104(C)	3.1.2.1
10 CFR 2.104(C)(4)	6.8
10 CFR 2.105	2.5 2.5.1 3.1.2.1
10 CFR 2.105(A)(3)	6.1.4
10 CFR 2.105(A)(4)	2.2 2.5 6.1.4
10 CFR 2.105(A)(6)	6.1.4
10 CFR 2.105(A)(7)	6.1.4
10 CFR 2.107	1.9
10 CFR 2.107(A)	1.9 3.1.2.1.1 3.18.2
10 CFR 2.109	1.2
10 CFR 2.18(E)	3.13
10 CFR 2.202	3.1.2.1 3.1.2.2 6.10.1 6.24 6.24.1.1
10 CFR 2.202 ET SEQ.	6.24
10 CFR 2.202(F)	6.10.1 6.24.4
10 CFR 2.204	6.1.4
10 CFR 2.205	6.10.1.1
10 CFR 2.205(A)	3.1.2.1.
10 CFR 2.205(E)	3.1.2.1

10 CFR 2.205(F)	3.1.2.1.
10 CFR 2.206	2.9.3.3.3 3.1.2.1 3.1.2.2 3.4.5 6.1.6 6.24 6.24.1 6.24.3
10 CFR 2.206(C)	5.6.1 5.8.14
10 CFR 2.206(C)(1)	6.24.3
10 CFR 2.206(C)(2)	6.24.3
10 CFR 2.600-2.606	1.3 6.6
10 CFR 2.700A	6.29.1
10 CFR 2.701(B)	2.8.1.1 3.1.4.1 6.5.3.2
10 CFR 2.704	2.8.1 3.1.4.1
10 CFR 2.704(C)	3.1.4.1
10 CFR 2.704(D)	3.1.5
10 CFR 2.707	2.9.9.5
10 CFR 2.707(B)	3.6
10 CFR 2.708(D)	2.9.10.1
10 CFR 2.710	5.10.3.1
10 CFR 2.711	2.11.1 2.9.3
10 CFR 2.711(A)	3.1.2.4
10 CFR 2.712	6.14.2.1
10 CFR 2.712(D)(3)	4.4.1.1
10 CFR 2.712(F)	2.9.10.1
10 CFR 2.713	6.4.1 6.4.2

10 CFR 2.713(A)	2.9.2 6.17.1
10 CFR 2.713(B)	2.9.2
10 CFR 2.713(C)	6.4.2
10 CFR 2.714	2.9.3 2.9.3.1 2.9.3.2 2.9.3.3.3 2.9.3.3.4 2.9.3.6 2.9.4.1.2 2.9.5 2.9.5.1 2.9.5.10 2.9.5.2 2.9.5.3 2.9.5.6 2.9.5.8 3.1 3.1.2.1 3.4.1 6.13 6.3.2
10 CFR 2.714(A)	2.9.3 2.9.3.3.3 2.9.3.3.4 2.9.4.1.1 2.9.5 2.9.5.5 2.9.8 3.1.2.1 3.1.2.2 3.15
10 CFR 2.714(A)(1)	2.9.3.3 2.9.3.3.3 2.9.3.3.4 2.9.3.5 2.9.3.6 2.9.5.5 2.9.9 6.3.2
10 CFR 2.714(A)(1)(1)	2.9.5.5
10 CFR 2.714(A)(2)	2.9.3
10 CFR 2.714(A)(3)	2.9.3.3.3 2.9.4.1.2 2.9.5 2.9.5.1

10 CFR 2.714(A)1	2.9.5.13
10 CFR 2.714(B)	2.9.3 2.9.3.1 2.9.3.5 2.9.5 2.9.5.1 2.9.5.4 2.9.5.5 2.9.7 2.9.9 3.4.1 4.4.1
10 CFR 2.714(C)	2.9.3.3.3 5.8.1
10 CFR 2.714(D)	2.9.3 2.9.3.3.3 6.13
10 CFR 2.714(E)	2.9.6 2.9.9.2.2 3.1.2 6.19.2
10 CFR 2.714(F)	3.1.2 6.19.2
10 CFR 2.714A	2.6.3.3 2.9.3 2.9.7 5.1 5.12.2 5.4 5.5.3 5.8.1 5.8.5
10 CFR 2.714A(B)	2.9.5.1 5.8.1
10 CFR 2.714A(C)	2.9.7
10 CFR 2.715	2.10.1.1 5.2
10 CFR 2.715(A)	2.10.1.2 3.13.1
10 CFR 2.715(C)	2.10.2 2.9.3.3.3 2.9.5.1 2.9.7 2.9.9.2.1 5.2

10 CFR 2.715(C)	5.8.1
10 CFR 2.715(D)	5.10.4 5.11.3
10 CFR 2.715A	2.9.6 2.9.9.2.2 3.3.6
10 CFR 2.716	3.3.6
10 CFR 2.717(A)	3.1.2.1 5.6.1
10 CFR 2.717(B)	3.1.2.2 6.13
10 CFR 2.718	2.9.5.1 2.9.9.5 3.1.2 3.1.2.1 3.1.2.5 3.1.2.7 3.11.1.1 3.12.4 3.3.4 3.4.4 5.12.1 6.19.2 6.23
10 CFR 2.718(C)	3.13.1
10 CFR 2.718(E)	2.9.5.5 3.13.1 3.14.2 6.4.1.1
10 CFR 2.718(I)	5.12.2 5.12.2.1 5.15 5.6.1
10 CFR 2.718(J)	3.1.2.1
10 CFR 2.719	6.24
10 CFR 2.720	2.11.2 2.11.3 2.11.5 2.11.5.1 3.12.1
10 CFR 2.720(A)	2.11.5 3.12.1 3.12.1.1

10 CFR 2.720(A)-(G)	3.12.1.1
10 CFR 2.720(D)	2.11.2.2 3.12.4.1
10 CFR 2.720(F)	2.11.5 3.12.4.1
10 CFR 2.720(H)	3.12.1.1 3.12.4.1
10 CFR 2.720(H)(2)	2.11.3
10 CFR 2.720(H)(2)(I)	2.11.3 6.16.1.2
10 CFR 2.720(H)(2)(II)	2.11.3
10 CFR 2.721(D)	1.9 3.1.2.1.1 3.1.3
10 CFR 2.722	6.12
10 CFR 2.722(A)(3)	6.11
10 CFR 2.730	3.5.2.2 6.14 6.14.2.1
10 CFR 2.730(A)	2.8.1.1 3.1.4.1
10 CFR 2.730(B)	6.14.1
10 CFR 2.730(C)	6.14
10 CFR 2.730(F)	3.15 5.12.2 5.12.2.1 5.15 5.8.12 5.8.3.1 5.8.4
10 CFR 2.731	2.11.5.2
10 CFR 2.732	2.9.9.1 3.7
10 CFR 2.733(A)	3.13
10 CFR 2.740	2.11.5
10 CFR 2.740(A)(1)	2.11.1

10 CFR 2.740(B)	2.11.2.2 5.6.3 6.3.3.1
10 CFR 2.740(B)(1)	2.11.1 2.11.2 2.11.2.2 2.11.2.4 2.11.4
10 CFR 2.740(B)(2)	2.11.2.4 2.11.2.6
10 CFR 2.740(C)	2.11.2.2 2.11.2.4 2.11.5 3.12.4.1
10 CFR 2.740(D)	2.11.2.2
10 CFR 2.740(E)	2.11.2.7
10 CFR 2.740(E)(3)	2.11.2.7
10 CFR 2.740(F)	2.11.5
10 CFR 2.740(F)(1)	2.11.4
10 CFR 2.740(F)(2)	2.11.2.5
10 CFR 2.740(F)(3)	2.11.3
10 CFR 2.740A	2.11.2.2
10 CFR 2.740A(D)	2.11.2.2
10 CFR 2.740A(H)	2.11.2.2
10 CFR 2.740A(J)	2.11.3
10 CFR 2.740B	2.11.5
10 CFR 2.741	2.11.2 2.11.2.2 3.1.2.4
10 CFR 2.741(D)	2.11.4
10 CFR 2.741(E)	2.11.3
10 CFR 2.743	3.11
10 CFR 2.743(C)	3.11.1.1 3.11.1.1.1 4.4.1

10 CFR 2.743(G)	3.11.2
10 CFR 2.743(I)	3.10
10 CFR 2.744	2.11.3 6.23.1
10 CFR 2.744(D)	2.11.2.4 6.23.1 6.23.3.1
10 CFR 2.749	2.11.1 2.2 2.9.5.3 3.5 3.5.2 3.5.2.2 3.5.2.3 3.5.3 5.8.5
10 CFR 2.749(A)	3.5.2.1 3.5.2.3
10 CFR 2.749(B)	3.5.2.3
10 CFR 2.749(C)	3.5.2.1 3.5.2.3
10 CFR 2.749(D)	3.5.1.1 3.5.2 3.5.2.3 3.5.3
10 CFR 2.750(C)	2.9.10.1 5.12.2
10 CFR 2.751A	2.11.1 2.6 2.6.2 2.6.3.3 2.9.7 5.12.1 5.8.1
10 CFR 2.751A(A)	2.6.2
10 CFR 2.751A(B)	2.6.2
10 CFR 2.751A(C)	2.6.1
10 CFR 2.751A(D)	2.6.3.1 2.6.3.2
10 CFR 2.752	2.11.1 2.6

10 CFR 2.752(A)	2.6
10 CFR 2.752(B)	2.6.1
10 CFR 2.752(C)	2.6.3.1 2.6.3.2
10 CFR 2.753	3.9
10 CFR 2.754	4.2 4.2.2
10 CFR 2.754(B)	4.2.2
10 CFR 2.754(C)	4.2
10 CFR 2.756	4.4
10 CFR 2.757	3.13.1
10 CFR 2.757(C)	3.13 3.13.1
10 CFR 2.758	2.9.5.3 2.9.5.6 3.7.3.2 6.19 6.20.4
10 CFR 2.758(B)	6.19.1 6.20.4
10 CFR 2.758(D)	6.19.1
10 CFR 2.759	2.11.2 4.0
10 CFR 2.760	5.4
10 CFR 2.760(A)	3.1.2.1
10 CFR 2.760A	3.1.2.1 3.1.2.1.1 3.1.2.3 3.4.2 3.5.3
10 CFR 2.762	5.10.2 5.10.3 5.13 5.13.1.1 5.13.1.2 5.13.2 5.13.4 5.2 5.3

10 CFR 2.762	5.4 5.8.12 5.9.1
10 CFR 2.762(A)	4.3.1 5.10.2 5.10.3 5.13.2 5.4 5.6.1 5.8.10 5.9.1
10 CFR 2.762(B)	5.10.3.1
10 CFR 2.762(D)	5.10.3 5.13.2
10 CFR 2.762(E)	5.10.2 5.10.3
10 CFR 2.762(F)	5.10.2
10 CFR 2.763	5.11
10 CFR 2.764	4.3 5.7
10 CFR 2.764(A)	4.3
10 CFR 2.764(E)	4.3
10 CFR 2.764(E)(2)(II)	5.7
10 CFR 2.764(F)(2)	5.7
10 CFR 2.770	5.4
10 CFR 2.771	4.5 5.17 5.4
10 CFR 2.780	6.5.1
10 CFR 2.780(A)	6.5.1
10 CFR 2.780(D)	6.5.1
10 CFR 2.785	3.1.2.3 4.6 5.14 5.6.1 5.6.3 6.13
10 CFR 2.785(B)(1)	5.12.2

10 CFR 2.785(B)(1)	5.14
10 CFR 2.785(B)(2)	5.6.1
10 CFR 2.785(D)	5.14
10 CFR 2.786	5.15
10 CFR 2.786(A)	5.15
10 CFR 2.786(B)	5.12.3 5.7
10 CFR 2.786(B)(1)	5.15
10 CFR 2.786(B)(6)	5.15
10 CFR 2.786(B)(7)	4.7
10 CFR 2.788	4.3 5.19.3 5.7 5.7.1
10 CFR 2.788(A)	5.12.3 5.7
10 CFR 2.788(E)	5.7 5.7.1
10 CFR 2.788(F)	5.7
10 CFR 2.788(H)	5.12.3 5.7
10 CFR 2.790	2.11.2.4 2.11.3 3.1.2.3 6.23 6.23.1 6.23.3
10 CFR 2.790(A)	6.23.3
10 CFR 2.790(A)(7)	2.11.2.4 6.23.3.1
10 CFR 2.790(B)	6.23.3
10 CFR 2.790(B)(1)	6.23
10 CFR 2.790(B)(2)	6.23
10 CFR 2.790(B)(4)	6.23.3
10 CFR 2.790(B)(6)	6.23.3.1

10 CFR 2.790(C)	6.23
10 CFR 2.790(D)	2.11.2.4 6.23.3.2
10 CFR 2.800-2.807	6.20.3 6.21
10 CFR 2.802	6.21.2
10 CFR 2, APP.A,V(F)(4)	5.12.2
10 CFR 2, SUBPRT B	3.1.2.1 6.1.4.4 6.26 6.9.2.1
10 CFR 2, SUBPRT G	3.1.2.1 6.3.1
10 CFR 2,APP.A,I(C)(1)	3.4.4
10 CFR 2,APP.A,II(C)	2.6.3.1
10 CFR 2,APP.A,V(D)(4)	2.11.5.2
10 CFR 2,APP.A,VI(C)(1)	3.1.1
10 CFR 2,APP.A,VI(C)(2)	3.1.1
10 CFR 2,APP.A,VI(C)(3)	3.1.1
10 CFR 2,APP.A,VIII(B)	3.1.1
10 CFR 2,APP.B	3.1.2.1 4.3
10 CFR 50.10(C)	6.15.8.3 6.19 6.19.1 6.19.2
10 CFR 50.10(E)	6.19 6.19.2
10 CFR 50.10(E)(1)-(3)	6.19.2
10 CFR 50.100	6.26
10 CFR 50.109	6.9.2.1
10 CFR 50.12	6.19 6.19.1
10 CFR 50.30(D)	6.3.1

10 CFR 50.33(F)	6.8
10 CFR 50.33A	1.9
10 CFR 50.34(B)	6.3.1
10 CFR 50.36	6.27
10 CFR 50.40	6.1
10 CFR 50.44	3.4.1
10 CFR 50.45	6.20.4
10 CFR 50.46	6.15.7
10 CFR 50.47(A)(1)	1.8
10 CFR 50.47(A)(2)	1.8 2.9.5.3 3.0 3.11.1.5
10 CFR 50.47(B)	6.16.2
10 CFR 50.47(C)	3.1.2
10 CFR 50.57	6.13 6.16.1
10 CFR 50.57(A)	3.16
10 CFR 50.57(A)(3)	2.9.5
10 CFR 50.57(C)	6.15.1.1
10 CFR 50.59(A)(1)	6.1.6
10 CFR 50.59(A)(2)	6.1.6
10 CFR 50.72	6.5.4.1
10 CFR 50.82	6.28
10 CFR 50.90	6.1 6.1.5 6.3.1
10 CFR 50.91	6.1
10 CFR 50.APP.C	6.8
10 CFR 50.APP.I	3.4
10 CFR 50.APP.K	6.15.7 6.20.3

10 CFR 50.APP.M	6.15.1.2
10 CFR 50.APP.Q	1.3 6.6
10 CFR 51.21	6.15
10 CFR 51.5(B)	6.1.3.1 6.1.4.4
10 CFR 51.5(C)	6.1.3.1 6.1.4.4
10 CFR 51.52(B)	6.19.2
10 CFR 51.52(C)	6.19.2
10 CFR 51.53(C)	3.7.3.2
10 CFR 70.23	6.13 6.16.1
10 CFR 70.31	6.13 6.16.1
10 CFR 9.3-9.16	6.23
10 CFR 9.50	6.23
10 CFR 9.51	6.23
40 CFR 1500.9(E)	6.15.3.1

SSSSSSSSSS	TTTTTTTTTTT	AA	TTTTTTTTTTT	UU	UU	TTTTTTTTTTT	EEEEEEEEEEE
SSSSSSSSSS	TTTTTTTTTTT	AAAA	TTTTTTTTTTT	UU	UU	TTTTTTTTTTT	EEEEEEEEEEE
SS SS	TT	AA AA	TT	UU	UU	TT	EE
SS	TT	AA AA	TT	UU	UU	TT	EE
SSS	TT	AA AA	TT	UU	UU	TT	EE
SSSSSSSSS	TT	AA AA	TT	UU	UU	TT	EEEEEEEE
SSSSSSSSS	TT	AAAAAAAAAAAA	TT	UU	UU	TT	EEEEEEEE
SSS	TT	AAAAAAAAAAAA	TT	UU	UU	TT	EE
SS	TT	AA AA	TT	UU	UU	TT	EE
SS SS	TT	AA AA	TT	UU	UU	TT	EE
SSSSSSSSSSS	TT	AA AA	TT	UUUUUUUUUU		TT	EEEEEEEEEEEE
SSSSSSSSSS	TT	AA AA	TT	UUUUUUUU		TT	EEEEEEEEEEEE

IIIIIIIIII	NN	NN	DDDDDDDDDD	EEEEEEEEEEEE	XX	XX
IIIIIIIIII	NNN	NN	DDDDDDDDDD	EEEEEEEEEEEE	XXX	XXX
II	NNNN	NN	DD DD	EE	XXX	XXX
II	NN NN	NN	DD DD	EE	XXX	XXX
II	NN NN	NN	DD DD	EE	XXXXXX	
II	NN NN	NN	DD DD	EEEEEEEE	XXXX	
II	NN NN	NN	DD DD	EEEEEEEE	XXXX	
II	NN NN	NN	DD DD	EE	XXXXXX	
II	NN NNNN	NN	DD DD	EE	XXX XXX	
II	NN NN	NN	DD DD	EE	XXX XXX	
IIIIIIIIII	NN	NN	DDDDDDDDDD	EEEEEEEEEEEE	XXX	XXX
IIIIIIIIII	NN	N	DDDDDDDDDD	EEEEEEEEEEEE	XX	XX

ADMINISTRATIVE PROCEDURE ACT, 5 USC 551 ET SEQ	6.24
ADMINISTRATIVE PROCEDURE ACT, 5 USC 554	2.2
ADMINISTRATIVE PROCEDURE ACT, 5 USC 554(A)(4)	6.29.1
ADMINISTRATIVE PROCEDURE ACT, 5 USC 554(D)	3.1.5
ADMINISTRATIVE PROCEDURE ACT, 5 USC 554(E)	3.1.2.2
ADMINISTRATIVE PROCEDURE ACT, 5 USC 556(C)	3.3.4
ADMINISTRATIVE PROCEDURE ACT, 5 USC 556(C)(7)	3.13.1
ADMINISTRATIVE PROCEDURE ACT, 5 USC 556(C)(9)	3.1.2.2
ADMINISTRATIVE PROCEDURE ACT, 5 USC 556(D)	3.13.1
ADMINISTRATIVE PROCEDURE ACT, 5 USC 705	5.15.2
ATOMIC ENERGY ACT OF 1954 105(C)6	6.3
ATOMIC ENERGY ACT OF 1954 105C	2.9.3.6 6.3
ATOMIC ENERGY ACT OF 1954 182(A)	6.8
ATOMIC ENERGY ACT OF 1954 182(B)	3.11.2
ATOMIC ENERGY ACT OF 1954 186	1.5.2 6.5.4.1
ATOMIC ENERGY ACT OF 1954 189(A)	6.1.4
ATOMIC ENERGY ACT OF 1954 189A	6.26
ATOMIC ENERGY ACT 104(B)	6.3
ATOMIC ENERGY ACT 105	2.9.3.6 2.9.4.1.1 6.3.1 6.3.2
ATOMIC ENERGY ACT 105(C)	6.3 6.3.1
ATOMIC ENERGY ACT 105(C)(2)	6.3.1
ATOMIC ENERGY ACT 105(C)(5)	6.3
ATOMIC ENERGY ACT 105C(1)	6.3.1
ATOMIC ENERGY ACT 105C(2)	6.3.1
ATOMIC ENERGY ACT 109(B)	6.29.2.2

ATOMIC ENERGY ACT 127 AND 128	6.29.2.2
ATOMIC ENERGY ACT 181	3.13.1
ATOMIC ENERGY ACT 182	1.5.2
ATOMIC ENERGY ACT 189	2.9.4
ATOMIC ENERGY ACT 189A	2.9.3 2.9.3.1 2.9.3.3 2.9.4.1.1 2.9.4.1.3 2.9.5.1 3.1 6.1.4
ATOMIC ENERGY ACT 234	6.10.1.1
ATOMIC ENERGY ACT 274.L	2.10.2
ATOMIC ENERGY ACT 274B	2.10.2
ENDANGERED SPECIES ACT, 7	6.7.1
ENERGY REORGANIZATION ACT OF 1974, 42 USC 5801 ET SEQ.	1.8
FEDERAL REGISTER ACT 44 USC 1508	1.7.1 2.5.3
FEDERAL WATER POLLUTION CONTROL ACT (CLEAN WATER ACT), 511(C) (2)	6.15.8.5
FEDERAL WATER POLLUTION CONTROL ACT, 401	3.10
FREEDOM OF INFORMATION ACT, 5 USC 552(B)(7)(D)	2.11.2.4 6.23.3.1
HOBBS ACT, 28 USC 2341 ET SEQ.	4.5
NATIONAL ENVIRONMENTAL POLICY ACT	6.15 6.15.1 6.15.8
NATIONAL ENVIRONMENTAL POLICY ACT, 102 (2)	6.6
NATIONAL ENVIRONMENTAL POLICY ACT, 102 (2)(C)	6.15.2 6.15.4 6.6.1
NATIONAL ENVIRONMENTAL POLICY ACT, 102 (2)(E)	6.15.4
NATIONAL HISTORIC PRESERVATION ACT 16 USC 470-470(B), 470(C)-470(N)	6.15.8
NUCLEAR NON-PROLIFERATION ACT OF 1978	3.2.1 3.4.6

NUCLEAR WASTE POLICY ACT OF 1982, 112(A)	2.2
PUB. L. NO. 98-360, 98 STAT. 403 (1984)	2.9.10.1
PUBLIC LAW 97-415 (1982)	6.1.4
PUBLIC UTILITIES REGULATORY POLICIES ACT OF 1978	6.3
URANIUM MILL TAILINGS RADIATION CONTROL ACT OF 1978.	2.10.2
WILD AND SCENIC RIVERS ACT	6.19.1
28 USC 144	3.1.4.2
28 USC 1821	3.12.4.1
28 USC 455(A)	3.1.4.2
28 USC 455(B)(2)	3.1.4.2
28 USC 455(E)	3.1.4.2
42 USC 2014(AA)	6.13
42 USC 2014(Z)	6.13
42 USC 2018	6.15
42 USC 2071	6.13
42 USC 2073	6.13
42 USC 2091	6.13
42 USC 2093	6.13
42 USC 2201(C)	2.11.5
42 USC 2236	1.5.2 6.26
42 USC 2236A	6.5.4.1
42 USC 2239(A)	2.9.4.1.3 6.26
42 USC 2280	6.26
42 USC 2282	6.26
42 USC 4332	6.15
42 USC 4332(2)(C)	6.6.1
5 USC 554	2.2

5 USC 555(E)

6.16.1

5 USC 556

2.11.5.2

5 USC 558(C)

6.10.1

ADICKES V. KRESS AND CO., 398 U.S. 144 (1970)

3.5.3

AESCHLIEMAN V. NRC, 547 F.2D 622 (D.C. CIR. 1976)

3.7.2

AIR LINE PILOTS ASS'N INTERNATIONAL V. C.A.B., 458 F.2D 846 (D.C. 1972), CERT. DENIED, 420 U.S. 972 (1975)

6.10.1

ALYESKA PIPELINE SERV V. WILDERNESS SOCIETY, 421 U.S. 240 (1975)

1.9

AMERICAN MANUF. MUT. INS. CO. V. AMERICAN BROADCASTING- PARAMOUNT THEATERS, 388 F.2D 272 (2D CIR. 1967)

3.5.3

AMERICAN TRUCKING ASSOCIATION V. UNITED STATES, 627 F.2D 1313 (D.C. CIR. 1980)

6.20

ASS'N OF DATA PROCESSING SERVICE ORGANIZATIONS, INC. V. CAMP, 397 U.S. 150 (1970)

2.9.4.1.1

BARLOW V. COLLINS, 397 U.S. 159 (1970)

2.9.4.1.1

BARR MARINE PRODUCTS CO. V. BORG-WARNER CORP., 84 F.R.D. 631 (E.D.PA. 1979)

2.11.2.4

BELL V. SOCIALIST WORKERS PARTY, 436 U.S. 962 (1978)

2.11.2.4
6.23.3.1

BPI V. AEC, 502 F.2D 424 (D.C. CIR. 1974)

2.11.1

2.9.3.1

2.9.5.1

3.5.1

BROOKS V. VOLPE, 350 F. SUPP. 269 (W.D. WASH. 1972)

6.15.3

CALIFORNIA V. WATT, 683 F.2D 1253 (9TH CIR. 1982)

6.15.1.1

CARL ZEISS STIFTUNG V. V. E. B. CARL ZEISS, JENA, 40 F.R.D. 318 (D.D.C. 1966), AFF'D, 384 F.2D 979 (D.C. CIR. 1967)

2.11.2.4

CARSON PRODUCTS CO. V. CALIFANO, 594 F.2D 453 (5TH CIR 1979)

3.10

CHICAGO POLICE OFFICERS ASSOC. V. STOVER, 526 F.2D 431 (10TH CIR. 1975), 426 U.S. 994 1976, 552 F.2D 918 (10TH CIR.

2.9.4.1.1

CHRYSLER CORP. V. BROWN, 441 U.S. 281 (1979)

6.23

CITIZENS FOR SAFE POWER V. NRC, 524 F.2D 1291 (D.C. CIR. 1975)

6.15.3

CITY OF WEST CHICAGO V. NRC, 701 F.2D 632 (7TH CIR. 1983)

2.2

CITY OF WEST CHICAGO V. NRC, 701 F.2D 632 (7TH CIR. 1983)

2.5

6.13

COMMITTEE FOR AUTO RESPONSIBILITY V. SOLOMON, 603 F.2D 992 (D.C. CIR. 1979), CERT. DENIED, 445 U.S. 915 (1980)

6.15.9

CONSERVATION LAW FOUNDATION V. GSA, 427 F. SUPP. 1369 (D.R.I. 1977)

6.15.1.2

CREST AUTO SUPPLIES, INC. V. ERO MANUFACTURING CO., 360 F.2D 896 (7TH CIR. 1966)

3.5.3

DONOFRIO V. CAMP, 470 F.2D 428 (D.C. CIR. 1972)

3.5.2.1

DREYFUS V. FIRST NATIONAL BANK OF CHICAGO, 424 F.2D 1171 (7TH CIR.), CERT. DEN., 400 U.S. 832 (1970)

3.17

EASTON UTILITIES COMMISSION V. AEC, 424 F.2D 847 (D.C. CIR. 1970)

2.9.3

ECOLOGY ACTION V. AEC, 492 F.2D 998 (2ND CIR. 1974)	6.15.3 6.21.2
ENVIRONMENTAL DEFENSE FUND, INC. V. ANDRUS, 619 F.2D 1368 (1980)	6.15.1.1
EPA V. MINK, 410 U.S. 73 (1973)	2.11.2.4
ESSEX CITY PRESERVATION ASS'N V. CAMPBELL, 536 F.2D 956 (1ST CIR. 1976)	6.15.3
F.P.C. V. TEXACO, INC., 377 U.S. 33 (1964)	6.21
FAIRFIELD UNITED ACTION V. NRC, 679 F.2D 261 (D.C. CIR. 1982)	6.13
FEDERAL CROP INSURANCE CORP. V. MERRILL, 332 U.S. 380 (1947)	2.5.3
FEDERAL OPEN MARKET COMMITTEE OF THE FEDERAL RESERVE SYSTEM V. MERRIL, 443 U.S. 340 (1979)	2.11.2.4
FEDERAL TRADE COMMISSION V. TEXACO 555 F.2D 862 (D.C. CIR. 1977), CERT. DEN. 431 U. S. 974 (1977)	3.17 6.15.1
FMC V. ANGLO-CANADIAN SHIPPING COMPANY, 335 F.2D 255 (9TH CIR. 1964)	2.11.5
GAGE V. U.S. AEC, 479 F.2D 1214 (D.C. CIR. 1972)	6.15.8
GREATER BOSTON TELEVISION CORP. V. FCC, 444 F.2D 841 (D.C. CIR. 1970)	3.4
GREEN COUNTY PLANNING BOARD V. FPC, 559 F.2D 1227 (2D CIR. 1977)	2.9.10.1
HERCULES, INC. V. EPA, 598 F.2D 91 (D.C. CIR. 1978)	6.21.2
HICKMAN, V. TAYLOR, 329 U.S. 495 (1947)	2.11.2.4
HODDER V. NRC, 589 F.2D 1115 (D.C. CIR. 1978)	6.19.2.1
HOMESTAKE MINING CO. V. MID-CONTINENT EXPLORATION CO., 282 F.2D 787 (10TH CIR. 1960)	6.13
HORNBLOWER AND WEEKS-HEMPHILL NOYES, INC. V. CSAKY, 427 F. SUPP. 814 (S.D.N.Y. 1977)	5.8.1
HUMMEL V. EQUITABLE ASSURANCE SOCIETY, 151 F.2D 994 (7TH CIR. 1945)	3.17
IN RE FISCHER, 557 F.2D 209 (9TH CIR. 1977)	2.11.2.4
IN RE INTERNATIONAL BUSINESS MACHINES CORP., 618 F.2D 923 (2D CIR. 1980)	3.1.4.2
IN RE UNITED STATES, 565 F.2D 19 (1977)	2.11.2.4 6.23.3.1
INTERNATIONAL HARVESTER CO. V. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMM., 628 F.2D 982 (7TH CIR. 1980)	3.17
KLEPPE V. SIERRA CLUB, 427 U.S. 390 (1976)	6.15.1.2 6.15.2
LE COMPTE V. MR. CHIP, INC. 528 F.2D 601 (5TH CIR. 1976)	1.9
LIFE OF THE LAND V. BRINEGAR, 485 F.2D 460 (9TH CIR. 1973), CERT. DENIED, 416 U.S. 961 (1974)	6.15.1.2

CASE LAW INDEX --- SEPTEMBER 1985

PAGE 3

MARKET ST. RY. V. RAILROAD COMM'N OF CALIFORNIA, 324 U.S. 548 (1945)	3.10
MARSHALL V. BARLOW'S, INC., 436 U.S. 307 (1978)	6.10
MARTIN V. EASTON PUBLISHING CO., 85 F.R.D. 312 (E.D. PA. 1980)	2.11.2.8
MAXWELL V. NLRB, 414 F.2D 477 (6TH CIR. 1969)	3.17
MCI COMMUNICATIONS CORP. V. AT&T, 85 F.R.D. 28 (N.D. ILL. 1979), AFF'D, 708 F.2D 1081, (7TH CIR. 1983)	3.13.1
MEMO FROM COMM. TO LBP RE SUA SPONTE ISSUES(6-30-81)	3.1.2.3
METROPOLITAN EDISON CO. V. PEOPLE AGAINST NUCLEAR ENERGY, 103 S. CT. 1556 (1983)	1.9
MEYERS V. BETHLEHEM SHIPBUILDING CORP., 303 U.S. 41 (1938)	5.7.1
MINNESOTA V. NRC, 602 F.2D 412 (D.C. CIR. 1979)	5.6.1 6.15.9 6.20.2 6.21.2
N.R.D.C. V. MORTON, 458 F.2D 827 (D.C. CIR. 1972)	6.15 6.15.1.2 6.15.3
N.R.D.C. V. NRC, 547 F.2D 633 (D.C. CIR. 1976), CERT. GRANTED, 97 S. CT. 1098 (1977)	6.9.1
NAACP V. FPC, 425 U.S. 662 (1976)	6.21
NATURAL RESOURCES DEFENSE COUNCIL V. MORTON, 458 F.2D 827 (D.C. CIR. 1972)	6.15.1.2
NEW ENGLAND COALITION ON NUCLEAR POLLUTION V. NRC, 582 F.2D 87 (1ST CIR. 1978)	3.1.5 3.4 3.7.3.2 6.15.3 6.15.4.1 6.15.6 6.15.8.4
NEW ENGLAND COALITION ON NUCLEAR POLLUTION V. NRC, 727 F.2D 1127 (D.C. CIR. 1984)	6.8
NEW ENGLAND POWER CO. V. NRC, 683 F.2D 12 (1ST CIR. 1982)	1.9
O'BRIEN V. BOARD OF EDUCATION OF CITY SCHOOL DIST OF N.Y. 86 F.R.D. 548 (S.D.N.Y. 1980)	2.11.2.4
OHIO-SEALY MATTRESS MANUFACTURING CO. V. KAPLAN, 90 F.R.D. 21 (N.D. IL. 1980)	2.11.2.4
PACIFIC COAST EUROPEAN CONFERENCE V. U.S., 350 F.2D 197 (9TH CIR.), CERT. DENIED, 382 U.S. 958 (1965)	6.21.2
PARKLANE HOSTERY CO. V. LEO M. SHORE, 439 U.S. 322 (1979)	3.17
PERMIAN BASIN AREA RATE CASES, 390 U.S. 747 (1968)	5.8.1
PESHAKAI V. DUNCAN, 476 F. SUPP. 1247 (D.D.C. 1979)	6.15.1.2
POLLER V. COLUMBIA BROADCASTING CO., 368 U.S. 464 (1962)	3.5.3

PORTER COUNTY CHAPTER OF THE IZAAK WALTON LEAGUE OF AMERICA V. AEC, 633 F.2D 1011 (7TH CIR. 1976)	6.16.2 6.24
PORTER COUNTY CHAPTER OF THE IZAAK WALTON LEAGUE OF AMERICA, INC. V. NRC, 606 F.2D 1363 (D.C. CIR. 1979)	6.24
PORTER COUNTY CHAPTER OF THE IZAAK WALTON LEAGUE, INC. V. NRC, 606 F.2D 1363 (D.C. CIR. 1979)	6.24.1
ROVARIO V. UNITED STATES, 353 U.S. 53 (1957)	2.11.2.4 6.23.3.1
RUSSELL V. DEP'T OF THE AIR FORCE, 682 F.2D 1045 (D.C. CIR. 1982)	2.11.2.4
SAN LUIS OBISPO MOTHERS FOR PEACE V. NRC, 751 F.2D 1287 (D.C. CIR. 1984)	6.16.1
SARTOR V. ARKANSAS NATURAL GAS CORP., 321 U.S. 620 (1954)	3.5.3
SCM CORP. V. XEROX CORP., 70 F.R.D. 508 (D. CONN.), INTER LOCUTORY APPEAL DISMISSED, 534 F.2D 1031 (2D CIR. 1976)	2.11.2.4
SEC V. CHENERY CORP., 318 U.S. 80 (1943)	6.16.1
SEC. AND EXCH. COMM'N V. SPENCE AND GREEN CHEMICAL CO. 612 F.2D 896 (5TH CIR. 1980)	3.5.2.1
SIEGEL V. ATOMIC ENERGY COMMISSION, 400 F.2D 778 (D.C. CIR. 1968)	3.1.2.7
SIERRA CLUB V. MORTON, 405 U.S. 727 (1972)	2.9.4.1.1 2.9.4.1.2
SMITH V. DANYO, 585 F.2D 83 (3D CIR. 1978)	3.1.4.1
SMITH V. FTC, 403 F. SUPP. 1000 (D. DEL. 1975)	2.11.2.4
STATE OF ALASKA V. ANDRUS, 580 F.2D 465 (D.C. CIR. 1978)	6.15
STATE OF WISCONSIN V. FPC, 210 F.2D 183 (1952), CERT. DEN., 345 U.S. 934 (1953)	3.10
TOWNSHIP OF LOWER ALLOWAYS CREEK V. PUBLIC SERVICE ELECTRIC CO., 687 F.2D 732 (3D CIR. 1982)	5.10.3
U.S. V. BERRIGAN, 482 F.2D 171 (3RD CIR. 1973)	2.11.2.4
U.S. V. NIXON, 418 U.S. 683 (1974)	2.11.2.4
U.S. V. RADIO CORP. OF AMERICA, 358 U.S. 334 (1959)	3.17
U.S. V. UTAH CONSTRUCTION CO., 384 U.S. 394 (1966)	3.17
UNION OF CONCERNED SCIENTISTS V. AEC, 499 F.2D 1069 (D.C. CIR. 1974)	3.1.1 3.11.1.1 3.16 4.2 6.1.3.1 6.15.6 6.21.2
UNITED MINE WORKERS OF AMERICA, DIST. 22 V. RONCCO, 314 F.2D 186 (10 CIR. 1966)	3.5.3
UNITED STATES V. DAVIS, 636 F.2D 1028 (5TH CIR. 1981)	2.11.2.4

CASE LAW INDEX --- SEPTEMBER 1985

	PAGE	5
UNITED STATES V. EL PASO CO., NO. 81-2484 (5TH CIR. AUGUST 13 1982)	2.11.2.4	
UNITED STATES V. GRINNELL CORP., 384 U.S. 563 (1966)	3.1.4.2	
UNITED STATES V. MUNSINGWEAR, INC., 340 U.S. 36 (1950)	2.9.3.3.5	
UNITED STATES V. PIERCE AUTO FREIGHT LINES, 327 U.S. 515 (1945)	3.10	
UNITED STATES V. STORER BROADCASTING CO., 351 U.S. 192 (1955)	6.21	
UNITED STATES V. UNITED SHOE MACHINERY CORP., 89 F. SUPP. 357 (D.MASS. 1950)	2.11.2.4	
UPJOHN CO. V. UNITED STATES, 449 U.S. 383 (1981)	2.11.2.4	
V. E. B. CARL ZEISS, JENA V. CLARK, 384 F.2D 979 (D.C. CIR. CERT. DEN. 389 U.S. 952 (1967)	2.11.4	
VEGA V. BLOOMSBURGH, 427 F. SUPP. 593 (D. MASS. 1977)	2.11.2.4	
VERMONT YANKEE NUCLEAR POWER CORP. V. NRDC, 435 U.S. 519 (1978)	3.7.2 3.7.3.2 4.4.2 5.11.1 6.15.1 6.15.1.1 6.15.1.2	
VIRGINIA ELECTRIC AND POWER CO. V. NRC, 571 F.2D 1289 (4TH CIR. 1978)	1.5.2	
VIRGINIA PETROLEUM JOBBERS ASS'N V. FPC, 259 F.2D 921 (D.C. CIR. 1958)	5.8.1	
WARM SPRING TASK FORCE V. GRIBBLE, 621 F.2D 1017 (9TH CIR. 1981)	6.15.1.1	
WARTH V. SELDIN, 422 U.S. 490 (1975)	2.9.4.1.1 2.9.4.1.2	
WASHINGTON METROPOLITAN AREA TRANSIT COMM. V. HOLIDAY TOURS, 559 F.2D 841 (D.C. CIR. 1977)	5.8.1	
WESTERN OIL AND GAS ASSOCIATION V. ALASKA, 439 U.S. 922 (1978)	6.15	
YORK COMMITTEE FOR A SAFE ENVIRONMENT V. NRC, 527 F.2D 812 (D.C. CIR. 1975)	3.7.2	

OTHER LEGAL CITATIONS INDEX

OTHER LEGAL CITATIONS INDEX

Code of Judicial Conduct Canon 2B	3.1.4.2
Code of Judicial Conduct Canon 3A(6)	3.1.4.2
Code of Professional Responsibility, DR 5-101(B)(4)	6.4.2.3
Code of Professional Responsibility, DR 5-102(A)	6.4.2.3
Code of Professional Responsibility, DR 5-102(B)	6.4.2.3
Code of Professional Responsibility DR 7-104	2.11.2.4
K. Davis, <u>Administrative Law Treatise</u> 15.08	3.10
2 Davis, <u>Administrative Law Treatise</u> 18.12	3.17
3 Davis, <u>Administrative Law Treatise</u> 22.08	2.9.4.1.1
35 <u>Fed. Reg.</u> 19122 (Dec. 17, 1970)	6.10.1.1
36 <u>Fed. Reg.</u> 16894 (Aug. 26, 1971)	6.10.1.1
41 <u>Fed. Reg.</u> 34707 (Aug. 16, 1976)	3.7.3.3
43 <u>Fed. Reg.</u> 17798 (April 26, 1978)	2.9.5
43 <u>Fed. Reg.</u> 28058 (June 26, 1978)	6.5.3.1
45 <u>Fed. Reg.</u> 3594 (1980)	6.4.2
45 <u>Fed. Reg.</u> 40101 (June 13, 1980)	6.15.7
45 <u>Fed. Reg.</u> 68919 (Oct. 17, 1980)	3.5.3
46 <u>Fed. Reg.</u> 30328 (June 8, 1981)	3.5.2.1
46 <u>Fed. Reg.</u> 47764 (Sept. 30, 1981)	4.3
47 <u>Fed. Reg.</u> 13750 (March 31, 1982)	6.8
49 <u>Fed. Reg.</u> 8583, 8584 (1984)	1.5.2
49 <u>Fed. Reg.</u> 9363 (March 12, 1984)	6.15.6
49 <u>Fed. Reg.</u> 35747 (Sept. 12, 1984)	6.8
Federal Rules of Civil Procedure, Rule 26	2.11.2 3.12.4.1
Federal Rules of Civil Procedure, Rule 26(b)	6.3.3.1

Federal Rules of Civil Procedure, Rule 26(b)(4)	2.11.2
Federal Rules of Civil Procedure, Rule 26(b)(4)(B)	3.1.2.7
Federal Rules of Civil Procedure, Rule 33	2.11.2.2
Federal Rules of Civil Procedure, Rule 41(a)(1),(2).....	1.9
Federal Rules of Civil Procedure, Rule 52(a)	5.6.3
Federal Rules of Civil Procedure, Rule 56	3.5
	3.5.2
	3.5.3
	3.5.4
	5.6.5
Federal Rules of Civil Procedure, Rule 56(f)	3.5.2.1
Federal Rules of Evidence, Rule 408	2.11.2
Federal Rules of Evidence, Rule 901(a)	3.11.1.1
Federal Rules of Evidence, Rule 902	3.11.1.6
<u>Long Island Lighting Co. (Jamesport Nuclear Power Station,</u> <u>Units 1 and 2), 2 CCH Nuclear Reg. Rep. ¶ 30,091 (Aug. 5, 1976)</u>	3.6
<u>Manual for Complex Litigation, Part 1, 4.30</u>	6.3.3.1
Model Rules of Professional Conduct Rule 1.7 (1983)	2.11.2.4
Model Rules of Professional Conduct Rule 3.3(a)(3) (1983)	2.11.2.4
Model Rules of Professional Conduct Rule 3.7(a)(3) (1983)	6.4.2.3
4A J. Moore, <u>Moore's Federal Practice</u> ¶ 33.25(1) (2nd ed. 1981).....	2.11.2.6
	2.11.4
5 J. Moore, <u>Moore's Federal Practice</u> ¶ 41.05 (2nd ed. 1981).....	1.9
6 J. Moore, <u>Moore's Federal Practice</u> ¶ 56.15(3) (2nd ed. 1966)	3.5.3
NUREG-75/087, § 2.23	6.16.4

NRC FORM 335 (2-84) NRCM 1102 3201, 3202 SEE INSTRUCTIONS ON THE REVERSE		U.S. NUCLEAR REGULATORY COMMISSION		REPORT NUMBER (Assigned by TIDC add Vol. No., if any) NUREG-0386 Digest No. 4					
BIBLIOGRAPHIC DATA SHEET				3. LEAVE BLANK					
2. TITLE AND SUBTITLE United States Nuclear Regulatory Commission Staff Practice and Procedure Digest (July 1, 1972 - June 30, 1985)				4. DATE REPORT COMPLETED <table border="1"> <tr> <td>MONTH</td> <td>YEAR</td> </tr> <tr> <td>January</td> <td>1986</td> </tr> </table>		MONTH	YEAR	January	1986
MONTH	YEAR								
January	1986								
5. AUTHOR(S) Aspen Systems Corporation				6. DATE REPORT ISSUED <table border="1"> <tr> <td>MONTH</td> <td>YEAR</td> </tr> <tr> <td>January</td> <td>1986</td> </tr> </table>		MONTH	YEAR	January	1986
MONTH	YEAR								
January	1986								
7. PERFORMING ORGANIZATION NAME AND MAILING ADDRESS (Include Zip Code) Office of the Executive Legal Director U.S. Nuclear Regulatory Commission Washington, D.C. 20555				8. PROJECT TASK WORK UNIT NUMBER NRC-14-85-392					
				9. FUNDING GRANT NUMBER					
10. SPONSORING ORGANIZATION NAME AND MAILING ADDRESS (Include Zip Code) Office of the Executive Legal Director U.S. Nuclear Regulatory Commission Washington, D.C. 20555				11. TYPE OF REPORT Final Legal Digest on Rules of Practice 11a. PERIOD COVERED (If applicable, date) 7/1/71 thru 6/30/85					
12. SUPPLEMENTARY NOTES									
13. ABSTRACT (200 words or less) <p>This edition of the NRC Staff Practice and Procedure Digest contains a digest of a number of Commission, Atomic Safety and Licensing Appeal Board, and Atomic Safety and Licensing Board decisions issued during the period July 1, 1972 to June 30, 1985 interpreting the NRC's Rules of Practice in 10 CFR Part 2. This edition replaces earlier editions and supplements and includes appropriate changes reflecting the amendment to the Rules of Practice effective June 30, 1985.</p>									
14. DOCUMENT ANALYSIS - KEY WORDS-DESCRIPTORS practice and procedures digest rules of practice				15. AVAILABILITY STATEMENT Unlimited					
16. IDENTIFIERS-OPEN ENDED TERMS				16. SECURITY CLASSIFICATION (This page) Unclassified (This report) Unclassified					
				17. NUMBER OF PAGES					
				18. PRICE					