

# ADJUDICATORY ISSUE INFORMATION

February 17, 2005

SECY-05-0034

**FOR:** The Commissioners

**FROM:** John F. Cordes, Director /RA/  
Office of Commission Appellate Adjudication

**SUBJECT:** ANNUAL REPORT ON COMMISSION ADJUDICATION

**PURPOSE:**

To provide the Commission a perspective on the adjudicatory caseload and the Commission's role in adjudication from January through December 2004.

**INTRODUCTION:**

At the NRC, the Commission has the authority to review the decisions of Presiding Officers and the Atomic Safety and Licensing Boards. The Office of Commission Appellate Adjudication (OCAA) assists the Commission in its adjudicatory role through monitoring cases and drafting Commission decisions. The Commission may exercise its appellate authority to review a Presiding Officer or Licensing Board decision either when a dissatisfied party to an NRC adjudicatory proceeding seeks review, or when the Commission, on its own initiative, determines that review is warranted. The Commission may also offer guidance to the Licensing Board on significant novel questions raised in an ongoing proceeding, as when a Board certifies a question or refers its ruling to the Commission. In addition, NRC regulations give the Commission original jurisdiction to resolve particular categories of adjudications, such as reactor license transfer adjudications. The Commission may also resolve preliminary questions arising before a Licensing Board has been established.<sup>1</sup>

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I am providing the Commission this report on agency adjudications for calendar year 2004 as part of OCAA's monitoring role over adjudicatory matters. This report updates information

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<sup>1</sup>For example, in three cases seeking early site permits for possible new reactors, the Commission determined that the NRC's new procedural rules should apply prior to referring the intervention petitions to the Board. See Dominion Nuclear North Anna (Early Site Permit for North Anna Site), Exelon Generation Company (Early Site Permit for Clinton Site), System Energy Resources, Inc. (Early Site Permit for Grand Gulf Site), CLI-04-08, 59 NRC 113 (2004).

contained in the last report (SECY-04-0011, Jan. 30, 2004), and is based upon the information in the attached charts. For the calendar year 2004, the attached charts list the Commission decisions (CLIs) issued, the final Licensing Board or Presiding Officer decisions issued, the new proceedings that were established and their current status, and a numerical breakdown of the types of proceedings that were the subject of Commission, Licensing Board, or Presiding Officer decisions during 2004.

## **COMMISSION ADJUDICATORY ACTIVITIES:**

### **1. Commission Adjudicatory Decisions in 2004**

As anticipated, 2004 was a busy year for the Commission in terms of adjudications. The Commission issued 39 CLIs in 2004, compared with 18 in 2003, 29 in 2002 and 28 in 2001. The 39 Commission decisions are the most since OCAA's founding (in 1991), indeed the most in Commission history.<sup>2</sup>

Commission decisions in 2004 spanned a variety of proceedings. The renewed interest in nuclear power was reflected in three Early Site Permit applications filed in late 2003, all of which generated litigation for the Board. This new interest is also shown by an application to license a new uranium enrichment plant submitted by USEC, joining a similar application filed last year by LES. Several enforcement cases came before the Commission, including the complex Tennessee Valley Authority whistleblower proceeding.<sup>3</sup> In that case, the Commission considered issues of first impression concerning how a Board must deal with a licensee accused of taking illegal retaliatory employment actions against an employee who has raised safety issues. Overall, 2004 saw an increase in the number of enforcement proceedings, material license proceedings, and reactor license amendment proceedings requiring Commission review.

Commission decisions continue to interpret and clarify NRC regulations, the AEA, and NEPA. Significant OCAA work in 2004 included the following:

**Whistleblower Case:** One of the Commission's most significant decisions issued this year was the Tennessee Valley Authority whistleblower decision.<sup>4</sup> There, the staff had imposed a \$110,000 fine on TVA for taking adverse personnel action against an employee who had engaged in "protected activities." The Board reduced the fine to \$44,000 because TVA had other, performance-based reasons to select another employee for a promotion the whistleblower had sought. TVA acknowledged that the plaintiff had engaged in "protected activities" but denied that those activities were a "contributing factor" for its choosing a different employee for promotion. The

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<sup>2</sup>Prior to 1991 the now-defunct Atomic Safety Licensing Appeal Board handled appeals in the first instance, thereby reducing the Commission's appealable caseload.

<sup>3</sup>CLI-04-24, 60 NRC 160 (2004).

<sup>4</sup>TVA (Watts Barr Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1 and 2), CLI-04-24, 60 NRC 160 (2004).

Commission formulated a test that strikes a balance between making a whistleblower case impossible to prove and making such a case impossible to defend.

**“Need to Know” cases:** In *Duke Energy Corporation* (Cawtaba Nuclear Station, Units 1 and 2), Duke is seeking an operating license amendment to use lead test assemblies of mixed oxide fuel in its reactor. In three significant decisions in this case, the Commission interpreted policies and regulations concerning what sensitive information parties intervening in adjudications should be allowed to see. In the first, CLI-04-6,<sup>5</sup> the Commission took interlocutory review at the staff’s request. The Commission’s decision set a high standard for what constitutes a “need to know” information at the contentions-pleading stage. The second order, CLI-04-21,<sup>6</sup> also interlocutory review at staff’s request, enunciated a standard for intervenor’s expert witness, whose expertise staff questioned, to be given access to safeguards material. The third order, CLI-04-29,<sup>7</sup> referred to the Commission by the Board, clarified the need-to-know standard as it applies to discovery.

**Financial Qualifications:** The Commission issued two orders clarifying NRC’s regulations concerning the financial qualifications of license applicants. In *Hydro Resources, Inc.*,<sup>8</sup> the Commission reviewed the Board’s highly detailed findings on the reasonableness of the applicant’s decommissioning cost estimates. In *Private Fuel Storage, L.L.C.*,<sup>9</sup> the Commission found that the applicant’s financial scheme, wherein it would borrow construction costs from potential customers and pass operating costs on to them, met the NRC’s reasonable “financial assurances” requirement.

**Bellotti cases:** The Commission issued orders in three cases that make it clear that outsiders may not challenge enforcement orders on the grounds that they should be strengthened. Twenty years ago, in *Bellotti v. NRC*,<sup>10</sup> the D.C. Circuit interpreted the AEA’s provision allowing “any person whose interest may be affected”<sup>11</sup> to be admitted as a party in a proceeding (among other things) modifying a license as it applied in an enforcement context. There, Circuit Judge Robert Bork, writing for the court, agreed with the NRC that it can limit the “scope of the proceeding” to the issue of whether an enforcement settlement already negotiated between the licensee and the NRC “should be sustained.” In other words, interested parties could only intervene to argue that the

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<sup>5</sup>59 NRC 62 (2004).

<sup>6</sup>60 NRC 21 (2004).

<sup>7</sup>60 NRC 417 (2004).

<sup>8</sup>(P.O. Box 15910 Rio Rancho, NM 87174), CLI-04-33, 60 NRC \_\_ (2004).

<sup>9</sup>CLI-04-27 (unpublished due to proprietary content).

<sup>10</sup>*Bellotti v. NRC*, 725 F2d 1380 (D.C. Cir. 1983).

<sup>11</sup>Atomic Energy Act §189(a). CLI-04-6, 59 NRC 52 (2004).

order should be relaxed, when the measures called for in the order would harm public safety, but not that additional measures should be imposed.

In *Maine Yankee Atomic Power Company* (Maine Yankee Atomic Power Station),<sup>12</sup> the Commission rejected the State of Maine's request for a hearing on an order issued to all ISFSI licensees (including Maine Yankee) that strengthened applicable security requirements following the September 11 attacks. The Commission said the fact that Maine *opposed* the issuance of the order (because it allegedly would impose unfunded burdens on the State) did not matter, because actually Maine wanted additional measures imposed on the licensee, not fewer. In *FirstEnergy Nuclear Operating Company* (Davis-Besse Nuclear Power Station, Unit 1),<sup>13</sup> the Commission rejected an environmental groups' request for a hearing on a Confirmatory Order modifying FirstEnergy's license to require additional safety measures before restarting the Davis-Besse plant. The Commission noted that the petitioners didn't have standing to protest the order because they would not be harmed by the additional measures imposed by the order. In *State of Alaska Department of Transportation and Public Facilities*<sup>14</sup>, the Commission rejected a whistleblower's attempt to intervene to protest as too weak a Confirmatory Order designed to rectify violations stemming from the licensee's retaliation against that whistleblower for engaging in protected activities.

**State Participation Under New Rules:** One of the first Commission cases to interpret the agency's new Part 2 procedural rules, *Louisiana Energy Services* (National Enrichment Facility)<sup>15</sup> clarified the choice a state has to either participate in an NRC proceeding as an interested state or as a party. Specifically, if a state has entered a proceeding as a party, it may participate at hearing on a contention introduced by another only by first adopting that contention as its own.

**CATS:** OCAA attorneys also prepared for the upcoming Yucca Mountain License application by participating in the interviews for the Commission Adjudicatory Technical Support (CATS) office. The CATS office identified 33 different technical disciplines that may arise with respect to the Yucca Mountain license application, and interviewed 106 people (three to four candidates for each part-time, temporary position). The CATS office will assign adjudicatory employees to help OCAA attorneys with technical issues in a more formal and efficient manner than the former ad-hoc method of assigning technical adjudicatory employees.

## **2. Pending Commission Appeals/Petitions for Review**

OCAA is currently working on appeals or petitions for review in the following proceedings:

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<sup>12</sup>CLI-04-5, 59 NRC 52 (2004).

<sup>13</sup>CLI-04-23, 60 NRC 154 (2004).

<sup>14</sup>CLI-04-26, 60 NRC 399 (2004).

<sup>15</sup>CLI-04-35, 60 NRC \_\_ (2004).

- C *Yankee Atomic Electric Company* (Yankee Nuclear Power Station): Both the NRC staff and the licensee have asked the Commission to review the Board's ruling in LBP-04-27, 60 NRC 539 (2004), which admitted two contentions by Citizens Awareness Network. They claim that neither contention presents a litigible issue.
- C *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation). In the Commission's ruling on what information should be withheld from publication in various Commission and Board orders as proprietary,<sup>16</sup> it directed the parties to submit proposed redactions consistent therewith. After PFS submitted its proposed redactions, Utah filed further objections to PFS's redactions. The Commission needs to rule on whether PFS's proposed redactions are consistent with its order in CLI-05-1.

### **ATOMIC SAFETY AND LICENSING BOARD PANEL**

The Atomic Safety and Licensing Board Panel was also working full tilt this year, releasing 33 published decisions in addition to several that were not published for proprietary or safeguards reasons, and countless unpublished procedural orders. Of the 33 published decisions, 8 represented the Boards' final resolution of the case—three on the merits, three on threshold issues, and two decisions approving settlement agreements.

Several of the Board's published rulings represent the initial rulings on admissibility of contentions, which, in hotly-contested proceedings, is a complex and labor-intensive task. For example, in the Duke Energy Corporation (application to use MOX fuel assemblies) the Board issued a 55-page order ruling on non-security contentions,<sup>17</sup> and a longer order on security contentions.<sup>18</sup> The Board also ruled on contentions in *LES* (National Enrichment Facility),<sup>19</sup> *Dominion Nuclear Connecticut* (Millstone Nuclear Power Station),<sup>20</sup> and *Entergy Nuclear Vermont Yankee* (Vermont Yankee Nuclear Power Station)<sup>21</sup> Under the NRC's new Part 2 rules, the Board has a relatively short period, 45 days after the filing of answers and replies, to rule on contentions, regardless of whether it hears oral argument on admissibility.<sup>22</sup> Thus far, various Boards have successfully met this deadline.

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<sup>16</sup>CLI-05-1, 61 NRC \_\_\_\_(2005).

<sup>17</sup>LBP-04-4, 59 NRC 129 (2004).

<sup>18</sup>LBP-04-10, 59 NRC 296 (2004) (redacted version).

<sup>19</sup>LBP-04-14, 60 NRC 40 (2004).

<sup>20</sup>LBP-04-15, 60 NRC 81 (2004).\_\_

<sup>21</sup>LBP-04-28, 60 NRC 548 (2004).

<sup>22</sup>10 C.F.R. § 2.309(i).

In 2004, 14 new Board proceedings were established.<sup>23</sup>

**Cases pending before the Licensing Board Panel:**

- C *Clinton Early Site Permit* (ESP)
- C *Dominion Nuclear* (North Anna)(early site review)
- C *Duke Energy* (Catawba)(MOX LTA amendment requests)
- C *Entergy Nuclear* (Vermont Yankee)
- C *Hydro Resources, Inc.* (in situ leachate mining)
- C *Louisiana Energy Services* (National Enrichment Facility)
- C *North Anna* ESP
- C *Nuclear Fuel Services* (BLEU Project)(MLA, MLA-2)(MLA-3 yet to be established)
- C *Private Fuel Storage, LLC* (ISFSI)
- C *Safety Light Corporation* (materials license)
- C *Savannah River MOX Fuel Fabrication* (Duke, Cogema, Stone & Webster)
- C *U.S. Dept. of the Army* (Jefferson Proving Ground)(MLA-2)
- C *Yankee Atomic Electric Company* (Yankee Nuclear Power Station)
- C *Yucca Mountain* (pre-license application matters)

**FUTURE BOARD AND COMMISSION CASELOAD:**

OCAA expects 2005 again to be a busy year for adjudications. Several complex proceedings are either nearing the final resolution by the Board or will potentially require Commission guidance to the Board.

**USEC, Inc. (American Centerfuge Plant):** In August, 2004, USEC submitted an application for a license to enrich uranium at a plant in Piketon, Ohio. The time for requesting a hearing was extended until February 28, 2005, due to the temporary unavailability of the NRC's ADAMS system. It is expected that this application will generate a great deal of litigation, as the LES has in the last year.

**Private Fuel Storage (ISFSI):** This case is reaching a close before the Board; as a result, the Commission may soon face the issue whether to make the Board's approval of the license (if

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<sup>23</sup>See Chart 3, attached.

that is the Board's decision) immediately effective.<sup>24</sup> The Board is expected to issue a decision on the last substantive issue pending in this case--whether the risk of an F-14 crashing into the site poses an unacceptable risk--by the end of this month.

**Louisiana Energy Services (LES)(enrichment facility):** LES filed an application for a centrifuge enrichment facility in Lea County, New Mexico in late 2003. The Commission order CLI-04-3<sup>25</sup> set forth an aggressive two-and-a-half-year schedule for a final agency decision on the LES application, and required the Board submit a written explanation if any of the prescribed milestones were not met. As anticipated by CLI-04-3, the Commission itself ruled on standing issues in a May, 2004, order<sup>26</sup> and referred the contentions to the Board. The Board ruled on contentions, finding 10 admissible.<sup>27</sup> The hearing process is moving forward in compliance with the Commission schedule.

**Hydro Resources, Inc. (HRI)(in situ leach uranium mining):** This complex and highly technical proceeding resumed active litigation in 2003 after settlement negotiations broke down. The HRI license, issued in 1998, involves four sites. Litigation over the first site -- termed "Section 8 at Church Rock" -- was concluded with the issuance of the Commission's order CLI-04-33. The Presiding Officer has scheduled the rest of the proceeding on the other three mining sites covered by the license. There are approximately 10 major safety or environmental issues involving the last three sites that have yet to be litigated.

**Nuclear Fuel Services, Inc.:** NFS seeks three related license amendments for a facility for downblending high-enriched uranium to low-enriched uranium. The three amendments have been consolidated into a single proceeding. This case, under the "old" subpart L, is now ripe for a merits decision by the Presiding Officer.

**Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility):** The NRC staff is expected to release the final Environmental Impact Statement and Safety Evaluation Report early in 2005, triggering the final round of proceedings on safety and environmental issues.

**Early Site Permit Applications:** Hearing requests were granted in two of three early site permit applications, for the *North Anna* and *Clinton* early site permit applications, and proceedings are advancing before the Board. As these applications are the first of their kind, it is likely that interlocutory Board rulings may generate certified questions or requests for interlocutory review by parties.

**New Part 2 Regulations:** The past year was the first for the new Part 2 procedures for adjudicatory proceedings, which apply to all adjudications filed on or after February 13, 2004.

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<sup>24</sup>See 10 C.F.R. §2.764.

<sup>25</sup>59 NRC 10 (2004).

<sup>26</sup>CLI-04-15, 59 NRC 355 (2004).

<sup>27</sup>LBP-04-14, 60 NRC 40 (2004).

The novelty of the Part 2 rules may result in Board-certified questions and other requests for Commission guidance throughout 2005.

If the Commissioners would like any additional information on this memorandum or on any adjudicatory proceeding, I would be happy to provide it.

Enclosures:

Charts 1-5.



| COMMISSION ADJUDICATORY DECISIONS, JANUARY - DECEMBER 2004 |   |   |                                  |   |  |
|--|---|---|----------------------------------|---|--|
| Decision Number/Cite/<br>Date                              | Case Name   | Type of<br>Proceeding                       | Decision Being<br>Challenged     | Relief<br>Sought  | Commission<br>Action   |
| 1) CLI-04-01,<br>59 NRC 1<br>(1/8/04)                      | Sequoyah Fuels<br>Corporation (Gore,<br>OK site)(MLA-5)                 | Materials License<br>Amendment (Subpart L)  | LBP-03-25, 58 NRC<br>392 (2003). | The State of Oklahoma appealed<br>the Board's denial of hearing on<br>Sequoyah's license amendment<br>request authorizing possession of<br>11e(2) material after its waste<br>product was reclassified as<br>11e(2) material. | The Commission affirmed the<br>Board's decision that the State<br>had no standing because the<br>materials license amendment<br>would authorize not authorize any<br>new activity. |
| 2) CLI-04-2,<br>59 NRC 5<br>(1/14/04)                      | Sequoyah Fuels<br>Corporation (Gore,<br>OK site)(MLA-7;<br>MLA-8)       | Materials License<br>Amendment (Subpart L)  | LBP-03-24, 58 NRC<br>383 (2003). | Petitioners sought hearing on<br>Sequoyah's groundwater<br>remediation and site reclamation<br>plans.   | The Commission affirmed Board's<br>rejection of hearing requests as<br>filed late without justification.   |
| 3) CLI-04-3,<br>59 NRC 10<br>(1/30/04)                     | Louisiana Energy<br>Services, L.P.<br>(National<br>Enrichment Facility) | Materials License -- Part<br>70 (Subpart L) | None.                            | Notice of Receipt of Application<br>for License; Notice of Availability<br>of Applicant's Environmental<br>Report; Notice of Consideration<br>of Issuance of License, and<br>Notice of Hearing and<br>Commission Order.       | The Commission gave notice of<br>the opportunity for a hearing on<br>LES's application and set<br>procedures, timetables and other<br>guidance for hearing requests.               |

<sup>1</sup>Unless otherwise noted, proceeding tracks indicate proceedings under "old" Part 2 procedural rules.

| Decision Number/Cite/Date        | Case Name   | Type of Proceeding                              | Decision Being Challenged   | Relief Sought   | Commission Action   |
|----------------------------------|---|---|---|---|---|
| 4) CLI-04-4, 59 NRC 31 (2/5/04)  | Private Fuel Storage (Independent Spent Fuel Storage Installation)    | ISFSI License-- Part 72 (Subpart G)             | LBP-98-7, 47 NRC 142 (1998);LBP-98-29, 48 NRC 286 (1998); LBP-99-34, 50 NRC 168 (1999); LBP-00-27, 52 NRC 216 (2000); LBP-00-28, 52 NRC 226 (2000). | At Commission's behest ( <i>See</i> CLI-03-16, 58 NRC 360 (2003)), Utah and Intervenor group OGD filed petitions for review of "interlocutory" Board decisions.   | The Commission accepted review of two issues offered by Utah and rejects the remainder of Utah's and OGD's claims of error.   |
| 5) CLI-04-5, 59 NRC 52 (2/18/04) | Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station) | Order Modifying License (Effective Immediately) | LBP-03-26, 58 NRC 396 (2003).   | Maine and Friends of the Coast sought hearing concerning the "Order Modifying Licenses" directed to all ISFSI owners concerning the change in threat environment. | The Commission affirmed Board's ruling that <u>Bellotti</u> allows NRC to limit hearings.                                     |
| 6) CLI-04-6, 59 NRC 62 (2/18/04) | Duke Energy Corporation (Catawba Nuclear Station, Units 1 and 2)      | License Amendment - Part 50 (Subpart G)         | Unpublished Board orders, dated Jan. 29, 2004 and Feb. 4, 2004.   | Staff challenged Board orders allowing intervenors access to safeguards materials concerning Duke's request to use MOX in reactors.                               | The Commission reversed Board's determination that intervenor needed access to relevant information to formulate contentions. |
| 7) CLI-04-7, 59 NRC 111 (3/2/04) | Private Fuel Storage, LLC (ISFSI)                                     | ISFSI License -- Part 72 (Subpart G)            | January 30, 2004 order (unpublished).   | Intervenor William D. Peterson appeals Board's dismissal of "petition" to license an Independent Spent Fuel Storage Facility at Pigeon Spur, Utah.                | The Commission affirmed Board.  |

| <b>Decision Number/Cite/Date</b>    | <b>Case Name</b>  | <b>Type of Proceeding</b>                       | <b>Decision Being Challenged</b>  | <b>Relief Sought</b>   | <b>Commission Action</b>  |
|-------------------------------------|---|---|---|--|---|
| 8) CLI-04-8, 59 NRC 113 (3/2/04)    | Dominion Nuclear North Anna (North Anna ESP)<br>Exelon Generation Company (Clinton ESP)<br>System Energy Resources (Grand Gulf ESP) | Early Site Permits (Part 52) (new Subpart L)    | None.   | Three Early Site Permit applicants sought application of new part 2 rules to proceedings.  | The Commission ordered application of new rules to the proceedings.   |
| 9) CLI-04-9, 59 NRC 120 (3/24/04)   | Private Fuel Storage, LLC (ISFSI)   | ISFSI License -- Part 72 (Subpart G)            | CLI-02-20, 56 NRC 147 (2002).   | Petitioner OGD asked Commission to reopen record on its Environmental Justice contention on receipt of new information.              | The Commission declined to reopen the record on ground that new information did not raise environmental justice concern under NEPA. |
| 10) CLI-04-10 (Unpublished)         | Private Fuel Storage, LLC (ISFSI)   | ISFSI License -- Part 72 (Subpart G)            | Unpublished Board decisions dated May 27, 2003 and Jan. 5, 2004.                    | PFS and Utah filed cross petitions for review on Board's rulings concerning financial assurances and decommissioning funding.        | The Commission granted PFS's petitions for review and denied Utah's.  |
| 11) CLI-04-11, 59 NRC 203 (4/21/04) | Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2)                                  | Reactor License Amendment-- Part 50 (Subpart G) | LBP-04-04, 59 NRC 129 (2004); unpublished order on security contentions, (4/12/04). | Duke appealed Board's ruling granting hearing and admitting contentions. Board certified questions relating to security contentions. | The Commission dismissed without prejudice Duke's appeal as premature, accepts certified questions, and sets briefing schedule.     |

| <b>Decision Number/Cite/Date</b>    | <b>Case Name</b>  | <b>Type of Proceeding</b>                         | <b>Decision Being Challenged</b>   | <b>Relief Sought</b>  | <b>Commission Action</b>   |
|-------------------------------------|---|---|--|---|--|
| 12) CLI-04-12, 59 NRC 237 (5/4/04)  | Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3) | Reactor License Renewal – Part 50 (Subpart G)     | Secretary’s decision to reject challenge to license renewal filed prior to docketing of application for license renewal. | Motion by CCAM to vacate Secretary’s decision and to apply old rules of procedure to Dominion’s application.  | The Commission denied the motion to vacate.  |
| 13) CLI-04-13, 59 NRC 244 (5/20/04) | Nuclear Fuel Services (Erwin, Tennessee)  | Materials License Amendment – Part 70 (Subpart L) | LBP-04-5, 59 NRC 196 (2004).   | Intervenor appealed denial of hearing request for lack of standing.   | The Commission affirmed Board.   |
| 14) CLI-04-14, 59 NRC 250 (5/20/04) | Hydro Resources Inc. (P.O. Box 15910, Rio Rancho, NM 87174)                         | Materials License -- Part 40 (Subpart L)          | LBP-04-3, 59 NRC 84 (2004).  | Applicant and Intervenor both sought review of Presiding Officers’ decision. HRI question interpretation of Part 40 decommissioning standards. Intervenor ask proceedings held in abeyance until applicant gets non-NRC permit. | The Commission granted review of Part 40 issues, denied Intervenor’s request to hold proceeding in abeyance. |
| 15) CLI-04-15, 59 NRC 256 (5/20/04) | Louisiana Energy Services, L.P. (National Enrichment Facility)                      | Materials License -- Part 70 (Subpart L)          | None. (CLI-04-3 gave public notice of docketing application and ruled that Commission would determine standing).         | Public interest groups requested hearings on application for enrichment facility license.   | The Commission granted standing and referred hearing request to the Board.                                   |
| 16) CLI-04-16, 59 NRC 355 (6/9/04)  | Private Fuel Storage (ISFSI)  | ISFSI License -- Part 72 (Subpart G)              | March 31, 2004 Board Order (unpublished).  | Cross-petitions for review of Board’s order determining what information should be withheld from public disclosure.   | The Commission accepted review and set a schedule for briefs.  |

| <b>Decision Number/Cite/<br/>Date</b>     | <b>Case Name</b>   | <b>Type of<br/>Proceeding</b>                                   | <b>Decision Being<br/>Challenged</b>                                       | <b>Relief<br/>Sought</b>  | <b>Commission<br/>Action</b>  |
|---|--|---|--|---|---|
| 17) CLI-04-17,<br>59 NRC 357<br>(6/15/04) | U.S. Department of<br>Energy (Plutonium<br>Export License)                                       | Materials Export License --<br>Part 110 (Subpart H)             | None.  | Intervenors sought hearing on<br>plutonium exports to France.   | The Commission denied the<br>hearing request for lack of<br>standing.   |
| 18) CLI-04-18,<br>60 NRC 1<br>(7/7/04)    | Pacific Gas &<br>Electric Company<br>(Diablo Canyon<br>Nuclear Power<br>Plant, Units 1 and<br>2) | Reactor License Transfer --<br>Part 50 (Subpart G)              | CLI-03-2,<br>57 NRC 19<br>(2003).  | City of Santa Clara asks<br>Commission to vacate its earlier<br>order providing guidance on<br>antitrust matters and to cancel<br>order, now moot, approving<br>license transfer. | The Commission denied the<br>petition to vacate.  |
| 19) CLI-04-19,<br>60 NRC 5<br>(7/7/04)    | Duke Energy<br>Corporation<br>(Catawba Nuclear<br>Station, Units 1 and<br>2)                     | Reactor Operating License<br>Amendment – Part 50<br>(Subpart G) | Unpublished Board<br>order of April 12,<br>2004 (Security<br>Contentions). | Review accepted on Board's<br>certified question.   | The Commission found security<br>contention inadmissible because it<br>was based on enforcement orders<br>applicable to other reactors but<br>not subject facility. |
| 20) CLI-04-20,<br>60 NRC 15<br>(7/7/04)   | U.S. Department of<br>Energy (High-Level<br>Waste Repository)                                    | High Level Waste<br>Repository – Part 63<br>(Subpart J)         | None.  | Nevada requested the<br>appointment of a Pre-license<br>Application Presiding Officer<br>(PAPO).  | The Commission appointed a Pre-<br>License Application Presiding<br>Officer to rule on disputes<br>concerning the electronic<br>availability of documents.          |

| <b>Decision Number/Cite/Date</b>          | <b>Case Name</b>  | <b>Type of Proceeding</b>  | <b>Decision Being Challenged</b>   | <b>Relief Sought</b>   | <b>Commission Action</b>   |
|---|---|--|--|--|--|
| 21) CLI-04-21,<br>60 NRC 21<br>(7/29/04)  | Duke Energy Corporation<br>(Catawba Nuclear Station, Units 1 and 2)   | Reactor License Amendment -- Part 50 (Subpart G)                   | June 30, 2004 Bench ruling finding BREDL's expert qualified as witness, confirmed LBP-04-13. | Staff sought interlocutory review challenging expert's qualifications to review security plan.   | The Commission affirmed Board.   |
| 22) CLI-04-22,<br>60 NRC 125<br>(8/17/04) | Private Fuel Storage, L.L.C. (ISFSI)  | ISFSI Licensing – Part 72 (Subpart G)                              | LBP-98-7, 47 NRC 142 (1998); Bench Ruling of May 17, 2002).                                  | Utah appealed Board's rejection of two contentions concerning completeness and accuracy of ER and FEIS (pursuant to Commission's invitation to file interlocutory appeals, CLI-03-16). | The Commission affirmed Board.   |
| 23) CLI-04-23,<br>60 NRC 154<br>(8/17/04) | FirstEnergy Nuclear Operating Company (Davis-Besse Nuclear Power Station, Unit 1)   | Confirmatory Order modifying Reactor License – Part 50 (Subpart G) | LBP-04-11, 59 NRC 154 (2004).  | Petitioners appealed Board's denial of a hearing on order modifying reactor license.   | The Commission affirmed Board.   |
| 24) CLI-04-24,<br>60 NRC 160<br>(8/18/04) | Tennessee Valley Authority (Watts Barr Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1 and 2) | Civil Penalty – Reactor Licensee – Part 50 (Subpart G)             | LBP-03-10 57 NRC 553 (2003).   | Licensee sought review of Board's imposition of monetary penalty for retaliating against "whistleblower."  | The Commission reversed in part and remanded the proceeding with guidance on how to interpret whistleblower protection regulation. |

| <b>Decision Number/Cite/Date</b>   | <b>Case Name</b>  | <b>Type of Proceeding</b>                            | <b>Decision Being Challenged</b>                                 | <b>Relief Sought</b>  | <b>Commission Action</b>  |
|--|---|--|--|---|---|
| 25) CLI-04-25,<br>60 NRC 223<br>(8/18/04)  | Louisiana Energy Services L.P.<br>(National Enrichment Services)    | Materials License Application – Part 70 (Subpart L)  | LBP-04-14 (referred ruling).                                     | Review of Board's disposition of 5 contentions (4 rejected, one accepted).  | The Commission affirmed Board except with respect to one basis of one contention, found by Commission inadmissible.       |
| 26) CLI-04-26,<br>60 NRC 399<br>(10/7/04)  | State of Alaska Department of Transportation and Public Facilities  | Confirmatory Order Modifying License (Subpart G)     | LBP-04-16<br>60 NRC 99 (2004).                                   | Staff challenged Board's ruling allowing intervention to affected whistleblower in enforcement proceeding.          | The Commission reversed Board's decision to grant intervention to the petitioner and terminated the proceeding.           |
| 27) CLI-04-27<br>(Unpublished – may be released in redacted form omitting proprietary financial information) | Private Fuel Storage, L.L.C. (ISFSI)                                | ISFSI Licensing – Part 72 (Subpart G)                | Unpublished Board decisions dated May 27, 2003 and Jan. 5, 2004. | PFS sought review of Board rulings concerning financial assurances.   | The Commission modified Board ruling.   |
| 28 ) CLI-04-28,<br>60 NRC 412<br>(10/7/04)   | Yankee Atomic Electric Co.<br>(Yankee Nuclear Power Station)        | Part 50- License amendment- License Termination Plan | None.  | Motion of the Citizens Awareness Network to dismiss this license termination plan proceeding as improperly noticed. | Motion denied.  |
| 29) CLI-04-29,<br>60 NRC 417<br>(10/7/04)  | Duke Energy Corporation<br>(Catawba Nuclear Station, Units 1 and 2) | Part 50 - License Amendment (Subpart G)              | LBP-04-21,<br>60 NRC 357 (2004).                                 | Referred ruling.  | The Commission reversed Board's decision allowing BREDL access to classified material and clarified need-to-know standard |

| <b>Decision Number/Cite/Date</b>           | <b>Case Name</b>   | <b>Type of Proceeding</b>  | <b>Decision Being Challenged</b>                              | <b>Relief Sought</b>   | <b>Commission Action</b>  |
|--|--|--|---|--|---|
| 30) CLI-04-30,<br>60 NRC 426<br>(10/7/04)  | USEC, Inc.<br>(American<br>Centerfuge Plant)   | License Application (Part<br>70) (Subpart L)                                     | None.   | None.  | Commission notice of opportunity<br>for hearing, with schedules and<br>guidance to the Board.   |
| 31) CLI-04-31,<br>60 NRC 461<br>(11/10/04) | Exelon Generating<br>Company, LLC<br>(Early Site Permit<br>for Clinton site)                       | Early Site Permit<br>application (Part 52)(new<br>Subpart L)                     | LBP-04-17,<br>60 NRC 229<br>(2004).                           | Intervenors request interlocutory<br>review based on “novelty of<br>issue” of Board decision denying<br>admission of some contentions. | Interlocutory review denied.  |
| 32) CLI-04-32,<br>60 NRC 469<br>(11/10/04) | US Department of<br>Energy (High Level<br>Waste Repository,<br>pre-license<br>application matters) | High Level Waste<br>Repository Licensing (Part<br>40) (Subpart L)                | LBP-04-20,<br>60 NRC 300<br>(2004).                           | DOE appeals PAPO’s ruling<br>striking “certification” that non-<br>indexed documents are<br>“available.”                               | Appeal held in abeyance.  |
| 33) CLI-04-33,<br>60 NRC __<br>(12/8/04)   | Hydro Resources,<br>Inc.)(P.O. Box<br>15910 Rio Rancho,<br>NM 87174)                               | Licensing Proceeding<br>(Part 40) (Subpart L)                                    | LBP-04-3,<br>59 NRC 84<br>(2004).                             | Petitions for review by both<br>intervenor and applicant of<br>financial qualifications ruling.  | Affirmed in part and reversed in<br>part.   |
| 34) CLI-04-34,<br>60 NRC __<br>(12/8/04)   | Renee Chun   | (OI Subpoena)  | OI Subpoena   | Motion to quash subpoena to<br>journalist who wrote about safety<br>issues at Indian Point.  | Motion partially granted with<br>respect to materials no longer in<br>journalist’s possession; denied<br>with respect to subpoena for<br>personal appearance. |
| 35) CLI-04-35,<br>60 NRC __<br>(12/8/04)   | Louisiana Energy<br>Services (National<br>Enrichment Facility)                                     | Licensing Proceeding –<br>Uranium Enrichment<br>Facility (Part 40)(Subpart<br>L) | CLI-04-25<br>(reconsideration<br>motion); referred<br>ruling. | New Mexico seeks admission of<br>late-filed contentions, Board<br>requests guidance on<br>participation of “interested<br>states.”     | Reconsideration denied, late-filed<br>contentions sent back to Board,<br>guidance on participation of<br>interested states at hearing.                        |



| <b>Decision Number/Cite/<br/>Date</b>     | <b>Case Name</b>  | <b>Type of<br/>Proceeding</b>                               | <b>Decision Being<br/>Challenged</b>                           | <b>Relief<br/>Sought</b>   | <b>Commission<br/>Action</b> |
|---|---|---|--|--|------------------------------|
| 36) CLI-04-36,<br>60 NRC __<br>(12/8/04)  | Dominion Nuclear<br>Connecticut, Inc.<br>(Millstone Nuclear<br>Power Station, Units<br>1 and 2)                         | License Renewal - Power<br>Reactor (Part 50) (Subpart<br>G) | LBP-04-15,<br>60 NRC 81 (2004)                                 | Petitioners appeal Board's<br>decision finding no admissible<br>contention.  | Board affirmed.              |
| 37) CLI-04-37,<br>60 NRC __<br>(12/8/04)  | Duke Energy<br>Corporation<br>(Catawba Nuclear<br>Station, Units 1 and<br>2)  | License Amendment (Part<br>50)(Subpart G)                   | CLI-04-29,<br>60 NRC 417 (2004)<br>(reconsideration<br>motion) | Petitioners seek reconsideration<br>of decision on "need-to-know."   | Reconsideration denied.      |
| 38) CLI-04-38,<br>60 NRC __<br>(12/14/04) | State of Alaska<br>Department of<br>Transportation and<br>Public Facilities<br>(Confirmatory Order<br>Modifying License | Enforcement Action (Part<br>30) (Subpart G)                 | CLI-04-26,<br>60 NRC 399 (2004)<br>(reconsideration<br>motion) | Petitioner seeking to intervene in<br>enforcement action asks<br>reconsideration of Commission's<br>ruling denying hearing.                                | Reconsideration denied.      |
| 39) CLI-04-39,<br>60 NRC __<br>(12/14/04) | Hydro Resources,<br>Inc.)(P.O. Box<br>15910 Rio Rancho,<br>NM 87174)  | Licensing Proceeding<br>(Part 40) (Subpart L)               | LBP-04-23  | Interveors sought<br>supplementation of FEIS on<br>impacts, including environmental<br>justice, to persons living in new<br>1000-unit housing development. | Request denied.              |

**CHART 2**

| <b>FINAL LICENSING BOARD DECISIONS,<sup>2</sup> JANUARY - DECEMBER 2003</b> |                                      |   |                           |   |                     |   |
|---|--------------------------------------|---|---------------------------|---|---------------------|---|
| <b>Decision Number/Cite/Date</b>  | <b>Case</b>                          | <b>Board Established or PO Designated</b> | <b>Type of Proceeding</b> | <b>Nature of Decision</b>   | <b>Appeal Taken</b> | <b>Commission Action</b>  |
| 1) January 5, 2004<br>(Unpublished)   | Private Fuel Storage, L.L.C. (ISFSI) | 9/15/97                                   | ISFSI License (Subpart G) | Resolution of issues concerning financial assurances for construction, operation and decommissioning. | Yes.                | Commission accepted review and partially affirmed, partially overruled Board decision in CLI-04-27 (unpublished due to proprietary financial information) |
| 2) January 30, 2004<br>(Unpublished)  | Private Fuel Storage, L.L.C. (ISFSI) | 9/15/97                                   | ISFSI License (Subpart G) | Board dismissed "Petition" to license an alternative ISFSI facility filed by William Peterson.        | Yes.                | CLI-04-7, 59 NRC 111, affirmed Board.   |

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<sup>2</sup> Includes all decisions or orders subject to an appeal or petition for review, including decisions on the merits of part or all of a case, decisions terminating a proceeding, and decisions denying party status to a petitioner. Also includes referred rulings and decisions certifying questions to the Commission.

| <b>Decision Number/Cite/Date</b>                   | <b>Case</b>   | <b>Board Established or PO Designated</b> | <b>Type of Proceeding</b>                                 | <b>Nature of Decision</b>  | <b>Appeal Taken</b> | <b>Commission Action</b>  |
|--|---|---|---|--|---------------------|---|
| 3) LBP-04-3,<br>59 NRC 84<br>(2/27/04)             | Hydro Resources, Inc.<br>(P.O. Box 15910 NM 87174)                  | 12/28/94                                  | Materials License – Part 40 (Subpart L)                   | Ruling that financial assurance plan for Restoration Action Plan contains several deficiencies requiring correction.               | Yes.                | CLI-04-33, 60 NRC __ (2004), affirmed in part and reversed in part.                 |
| 4) LBP-04-4,<br>59 NRC 129<br>(3/5/04)             | Duke Energy Corporation<br>(Catawba Nuclear Station, Units 1 and 2) | 9/17/03                                   | Reactor Operating License Amendment – Part 50 (Subpart G) | Ruling on standing and contentions, admitting BREDL as party but denying standing to NIRS.   | Yes.                | CLI-04-4, 59 NRC 203 dismissed Duke’s appeal as premature.                          |
| 5) March 31, 2004,<br>Board order<br>(Unpublished) | Private Fuel Storage, L.L.C.<br>(ISFSI)                             | 9/15/97                                   | ISFSI License (Subpart G)                                 | Ruling on what details of financial assurance plan may be withheld from public disclosure as proprietary information.              | Yes.                | Review accepted CLI-04-16, 59 NRC 355 (2004); ruling January 5, 2005 (unpublished). |
| 6) LBP-04-06,<br>59 NRC 211<br>(4/7/04)            | Nuclear Fuel Storage (Erwin, Tennessee) MLA                         | 9/3/02                                    | Materials License Amendment (Subpart L)                   | Board refers “Motion of Appeal” of LBP-04-05 to Commission. See 59 NRC 186, denying party status to petitioner Kathy Helms-Hughes. | Yes.                | CLI-04-13, 59 NRC 244, affirmed Board.  |

| <b>Decision Number/Cite/Date</b>                | <b>Case</b>   | <b>Board Established or PO Designated</b> | <b>Type of Proceeding</b>                                 | <b>Nature of Decision</b>                                   | <b>Appeal Taken</b>     | <b>Commission Action</b>   |
|---|---|---|---|---|-------------------------|--|
| 7) April 12, 2004, Board decision (Unpublished) | Duke Energy Corporation (Catawba Nuclear Station, Units 1 and 2)                    | 9/17/03                                   | Reactor Operating License Amendment – Part 50 (Subpart G) | Board certified security-related contentions to Commission. | Certification accepted. | CLI-04-4, 59 NRC 203 accepted certified question on security contentions; CLI-04-19, 60 NRC 5 (2004) found security contention inadmissible. |
| 8) LBP-04-08, 59 NRC 266 (05/26/04)             | FMRI, Inc. (Formerly Fansteel, Muskegee, OK Facility)MLA-3                          | 10/02/03                                  | (Subpart L)   | Initial Decision upholding License Amendment.               | No.                     | None.  |
| 9) LBP-04-11, 59 NRC 379 (06/02/04)             | FirstEnergy Nuclear Operating Company (Davis-Besse Nuclear Power Station, Unit 1)   |   | License Modification – confirmatory order                 | Denial of petition to intervene.                            | Yes.                    | CLI-04-23, 60 NRC 154, affirmed Board.   |
| 10) LBP-04-15, 60 NRC 81 (7/28/04)              | Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 1 and 3) | 5/19/04                                   | Reactor License Renewal (New Part 2)                      | Denial of petition to intervene.                            | Yes.                    | CLI-04-36 affirmed Board.  |

| <b>Decision Number/Cite/Date</b>     | <b>Case</b>   | <b>Board Established or PO Designated</b> | <b>Type of Proceeding</b>                                 | <b>Nature of Decision</b>   | <b>Appeal Taken</b> | <b>Commission Action</b>             |
|--------------------------------------|---|---|---|---|---------------------|--------------------------------------|
| 11) LBP-04-16, 60 NRC 99 (07/29/04)  | State of Alaska Department of Transportation and Public Facilities                  | 4/27/04                                   | Enforcement Proceeding -- Part 30 (Subpart G--New Part 2) | Allowed aggrieved employee intervention in enforcement over retaliatory employment practices. | Yes.                | CLI-04-26 60 NRC 399 reversed Board. |
| 12) LBP-04-19, 60 NRC 277 (08/06/04) | System Energy Resources, Inc. (Early Site Permit for Grand Gulf Site)               | 3/22/04                                   | Early Site Permit (New Part 2)                            | Deny petition to intervene for lack of litigable contention.                                  | Yes.                | CLI-05-4, 61 NRC __ affirmed Board.  |
| 13) LBP-04-22, 60 NRC 379 (09/20/04) | Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3) | 5/19/04                                   | Reactor License Renewal (New Part 2)                      | Denies Motion for Reconsideration of LBP-04-15 and Request for Leave                          | Yes.                | CLI-04-36 affirmed Board.            |
| 14) LBP-04-24, 60 NRC (11/4/04)      | CFC Logistics   | 7/14/03                                   | Materials License (Subpart L)                             | Decision approving settlement agreement.  | No.                 | None.                                |
| 15) LBP-04-30, 60 NRC __ (12/14/04)  | Sequoyah Fuels Corp. (MLA-6)  | 6/9/03                                    | Materials License Amendment – Part 40 (Subpart L)         | Decision approving settlement agreement.  | No.                 | None.                                |

**CHART 3**

| <b>NEW PROCEEDINGS REFERRED TO THE LICENSING BOARD PANEL, JANUARY - DECEMBER 2004</b> |  |                             |  |  |
|---|--|-----------------------------|--|--|
| <b>Date Board Established or PO Designated</b>  | <b>Case Name</b>   | <b>Type of Proceeding</b>   | <b>Status</b>  | <b>Commission Action</b>                   |
| 1) 2/24/04  | Nuclear Fuels Services, Inc.                                   | Materials License Amendment | Hearing pending.   |  |
| 2) 3/22/04  | System Energy Resources Inc (Grand Gulf Early Site Permit)     | Early Site Permit           | Hearing request denied for lack of litigable contention; closed.     | Board affirmed; case closed.               |
| 3) 3/22/04  | Exelon Generating Co. (Clinton Early Site Permit)              | Early Site Permit           | Hearing pending.   |  |
| 4) 3/22/04  | Dominion Nuclear North Anna (North Anna Early Site Permit)     | Early Site Permit           | Hearing pending.   |  |
| 5) 4/15/04  | Louisiana Energy Services, L.P. (National Enrichment Facility) | Materials License           | Hearing pending.   |  |
| 6) 4/27/04  | Alaska Department of Transportation and Public Facilities      | Confirmatory Order          | Proceeding terminated by Commission order.                           | Proceeding terminated by Commission order. |
| 7) 5/19/04  | Dominion Nuclear Connecticut (Millstone Units 2 and 3)         | License Renewal             | Hearing request denied due to lack of litigable contentions; closed. | Board affirmed; case closed.               |
| 8) 6/25/04  | Sequoyah Fuels Corporation (MLA-9)                             | Materials License Amendment | Dismissed on basis of settlement agreement.                          | None.                                      |

| <b>Date Board Established or PO Designated</b> | <b>Case Name</b>  | <b>Type of Proceeding</b>                                  | <b>Status</b>  | <b>Commission Action</b>               |
|--|---|--|--|--|
| 9) 7/8/04                                      | U.S. Department of Energy<br>(High Level Waste Repository<br>Pre-Application Matters –<br>PAPO) | High Level Waste<br>Repository Pre-<br>Application Matters | Hearing pending.                                     | Appeal held in abeyance<br>(CLI-04-32) |
| 10) 9/14/04                                    | Vermont Yankee  | License Amendment<br>(Power Uprate)                        | Hearing pending.                                     |  |
| 11) 9/22/04                                    | Safety Light Corporation<br>(Bloomsburg, PA site)   | Enforcement  | Hearing pending.                                     |  |
| 12) 10/7/04                                    | US Enrichment Corporation<br>(American Centerfuge Plant)  | License application  | Pre-hearing matters.                                 |  |
| 13) 10/19/04                                   | Yankee Atomic Electric Co.  | Operating License<br>amendment (LTP)                       | Hearing pending.                                     |  |
| 14) 11/1/04                                    | US Inspection Services (Dayton,<br>OH facility)   | Enforcement  | Hearing request withdrawn, proceeding<br>terminated. | None.                                  |

PROCEEDINGS DECIDED BY AND REFERRED TO THE ATOMIC SAFETY & LICENSING BOARD -- CY-2004

| PERIOD | FINAL ASLBP DECISIONS | NEW PROCEEDINGS REFERRED TO THE ASLBP | SUBSTANTIVE TYPES OF NEW PROCEEDINGS |                          |                         |                  |                             |                 |       | PROCEDURAL RULES GOVERNING NEW PROCEEDINGS |         |         |         |
|--------|-----------------------|---------------------------------------|--------------------------------------|--------------------------|-------------------------|------------------|-----------------------------|-----------------|-------|--|---------|---------|---------|
|        |                       |                                       | ENFORCEMENT                          | REACTOR LICENSE AMENDM'T | REACTOR LICENSE RENEWAL | REACTOR OPERATOR | MATERIALS LICENSING MATTERS | DECOMMISSIONING | OTHER | SUBPT G                                    | SUBPT K | SUBPT L | PART 13 |
| 1994   | 14                    | 20                                    | 11                                   | 1                        | 0                       | 0                | 6                           | 1               | 1     | 12   |         | 7       | 1       |
| 1995   | 13                    | 4                                     | 2                                    | 1                        | 0                       | 0                | 1                           | 0               | 0     | 3  |         | 1       | 0       |
| 1996   | 19                    | 9                                     | 4                                    | 1                        | 0                       | 2                | 1                           | 1               | 0     | 7  |         | 2       | 0       |
| 1997   | 23                    | 13                                    | 5                                    | 1                        | 0                       | 1                | 6                           | 0               | 0     | 7  |         | 6       | 0       |
| 1998   | 20                    | 24                                    | 5                                    | 7                        | 2                       | 3                | 7                           | 0               | 0     | 14   |         | 10      | 0       |
| 1999   | 21                    | 12                                    | 1                                    | 2                        | 0                       | 0                | 9                           | 0               | 0     | 3  |         | 9       | 0       |
| 2000   | 13                    | 11                                    | 2                                    | 1                        | 1                       | 0                | 6                           | 1               | 0     | 4  | 1       | 6       | 0       |
| 2001   | 15                    | 8                                     | 1                                    | 0                        | 1                       | 1                | 4                           | 1               | 0     | 3  | 0       | 5       | 0       |
| 2002   | 13                    | 14                                    | 3                                    | 4                        | 0                       | 0                | 6                           | 0               | 0     | 7  | 1       | 5       | 0       |
| 2003   | 24                    | 10                                    | 1                                    | 1                        | 0                       | 0                | 7                           | 1               | 0     | 2  | 0       | 8       | 0       |
| 2004   | 8                     | 14                                    | 2                                    | 1                        | 1                       | 0                | 5                           | 1               | 4     |  |         |         |         |

- KEY:**
- " **Enforcement** proceedings include those initiated by orders imposing a civil penalty; orders to modify, suspend, or revoke a license; or orders to individuals.
  - " **Reactor licensing** proceedings concern applications for a construction permit or operating license, amendments to permits or operating licenses, or applications to transfer a license.
  - " **Reactor renewal** proceedings involve applications for 20-year renewals of power reactor operating licenses.
  - " **Reactor operator** proceedings involve challenges to the staff's rejection of either reactor operator or senior reactor operator license applications.
  - " **Materials licensing** proceedings involve applications to grant an initial license, or to amend or renew a license for the possession and use of radioactive material in various applications regulated by the NRC.
  - " **Decommissioning** proceedings involve review and approval of decommissioning plans or related amendments for reactor or materials facilities.
  - " **Other** proceedings include the 3 reactor Early Site Permit cases of 2004 and the high level waste repository pre-application proceedings of 2004..



" Proceedings under **Subpart G** and **Part 13** are conducted according to formal, trial-type procedures. **Subpart L** proceedings are conducted under informal procedures and involve either materials licenses or reactor operator licenses.

COMMISSION DECISIONS ON ADJUDICATORY MATTERS -- CY-2004

CHART 5

| PERIOD | REQUESTS FOR RELIEF or SUA SPONTE MATTERS DECIDED | BASIS FOR COMMISSION JURISDICTION        |   |  |                    |                   | SUBSTANTIVE TYPES OF CASES |                           |                         |                          |                                     |                  |                             |                     |                          |       |
|--------|---|--|---|--|--------------------|-------------------|----------------------------|---------------------------|-------------------------|--------------------------|-------------------------------------|------------------|-----------------------------|---------------------|--------------------------|-------|
|        |   | APPEAL/PETITION FOR REVIEW ON THE MERITS | INTER-LOCUTORY APPEAL, AS OF RIGHT (§ 2.714a) | INTER-LOCUTORY APPEAL, DISCRETIONARY + BOARD REFERRALS OR CERTIFNS | ORIG. JURISDICTION | SUA SPONTE ACTION | Enforcement Actions        | Reactor License Amendm'ts | Reactor License Renewal | Reactor Operator License | Spent Fuel Storage License or ISFSI | Material License | Material License Amendments | Decommissioning/LTP | Reactor License Transfer | Other |
| 1994   | 16  | 2  | 4   | 3  | 6                  | 1                 | 6                          | 4                         | 0                       | 0                        |                                     | 1                |                             | 3                   |                          | 2     |
| 1995   | 17  | 5  | 1   | 5  | 5                  | 1                 | 3                          | 7                         | 0                       | 0                        |                                     | 5                |                             | 1                   |                          | 1     |
| 1996   | 13  | 9  | 1   | 0  | 2                  | 1                 | 1                          | 2                         | 0                       | 1                        |                                     | 2                |                             | 5                   |                          | 2     |
| 1997   | 15  | 11                                       | 2   | 0  | 2                  | 0                 | 3                          | 0                         | 0                       | 2                        |                                     | 9                |                             | 0                   |                          | 1     |
| 1998   | 25  | 2  | 7   | 4  | 10                 | 2                 | 1                          | 4                         | 5                       | 0                        | 2                                   | 10               |                             | 0                   |                          | 5     |
| 1999   | 30  | 4  | 5   | 3  | 17                 | 1                 | 1                          | 3                         | 1                       | 0                        | 1                                   | 10               |                             | 0                   | 11                       | 4     |
| 2000   | 25  | 6  | 1   | 2  | 16                 | 0                 | 0                          | 0                         | 1                       | 1                        | 5                                   | 6                |                             | 0                   | 8                        | 8     |
| 2001   | 28  | 7.5 (fn <sup>3</sup> )                   | 2.5   | 8  | 10                 | 0                 | 0                          | 1                         | 3                       | 0                        | 11                                  | 5                |                             | 2                   | 4                        | 9     |
| 2002   | 29  | 1  | 2.5   | 15.5   | 10                 | 0                 | 0                          | 1                         | 5                       | 0                        | 11                                  | 10               |                             | 0                   | 3                        | 13    |
| 2003   | 18  | 5  | 2   | 5  | 4                  | 2                 | 1                          | 2                         | 2                       | 0                        | 6                                   | 3                |                             | 1                   | 3                        | 0     |
| 2004   | 39  | 7  | 9   | 13   | 8                  | 2                 | 6                          | 6                         | 2                       | 2 <sup>4</sup>           | 7                                   | 8                | 2 <sup>5</sup>              | 2                   | 1                        | 3     |

**KEY:** " Original jurisdiction is exercised by the Commission over, e.g., reactor license transfer applications, export licensing applications, motions to quash investigatory subpoenas, reconsideration and some stay motions, requests for hearing in some circumstances, and motions to reopen closed adjudicatory proceedings.

<sup>3</sup> Several CLIs fall within two categories rather than just one. We have therefore divided each of these Memoranda and Orders evenly between the categories into which it falls.

<sup>4</sup> Early site permit cases.

<sup>5</sup> Materials License amendment cases reported separately starting in CY 2004

- " Commission **sua sponte action** is taken to provide additional guidance to the staff or the ASLBP on matters of policy or procedure in the exercise of the Commission's inherent supervisory authority over adjudications and other agency business.
- " **Enforcement** proceedings include those initiated by orders imposing a civil penalty, orders to modify, suspend, or revoke a license, or orders to individuals. Decisions on motions to quash investigatory subpoenas are also included.
- " **Reactor licensing** proceedings concern applications for a construction permit or operating license, amendments to permits or operating licenses, or applications to transfer a license.
- " **Reactor renewal** proceedings involve applications for 20-year renewals of power reactor operating licenses.
- " **Reactor operator** proceedings involve challenges to the staff's rejection of applications for either a reactor operator license or a senior reactor operator license.
- " **Materials licensing** proceedings involve applications to grant an initial license or to amend or renew a license for the possession and use of radioactive material in various applications regulated by the NRC.
- " **Decommissioning** proceedings involve review and approval of decommissioning plans or related amendments for reactor or materials facilities.
- " **Reactor license transfer** proceedings involve requests by owners of interests in commercial nuclear reactors for authorization to sell their financial interests.
- " **Other matters** include requests for hearing or other relief in matters involving export licensing (Part 110) or the U.S. Enrichment Corp. They also include the Commission's 1998 Policy Statement on Adjudicatory Proceedings and cases involving fuel fabrication facilities.

**NOTE:** In this report, the 2000 and 2001 numbers for the Subpart K, Subpart L and "Other" categories have been revised.