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Mark Your Calendars

2017 Annual Meeting & Conference

April 3-4, 2017

Washington, DC

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Trends in NRC Litigation, an ASLBP Perspective

Location: Hogan Lovells US LLP, Columbia Square, 555 13th St., N.W., Washington, DC 20004/
Teleconference Participation will also be available
Thursday, January 12, 2017 (12:00 noon - 1:30 pm Eastern Time)

Program Overview:

Three Nuclear Regulatory Commission Atomic Safety & Licensing Board Panel (ASLBP) administrative judges will provide a review of recent and potential future litigation before the Nuclear Regulatory Commission (NRC). The discussion will focus on spent fuel on-site and interim storage, decommissioning and plant life extension efforts, and environmental and historic preservation issues arising in the context of uranium ISL operations, Yucca Mountain litigation and ITAAC hearings for new reactors. A networking session will be held following the presentation.

Moderator:

Daniel F. Stenger, Partner, Hogan Lovells US LLP

Speakers:

Judge G. Paul Bollwerk, III, Nuclear Regulatory Commission
Judge William J. Froehlich, Nuclear Regulatory Commission
Judge Michael F. Kennedy, Nuclear Regulatory Commission

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TRENDS IN NRC LITIGATION: AN ASLBP PERSPECTIVE

Energy Bar Association Seminar
January 12, 2017

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Topics for Discussion

- NRC Adjudicatory Process Basics
  - The Atomic Safety and Licensing Board Panel (ASLBP)
  - 10 C.F.R. Part 2 Hearing Types
  - Current Types of ASLBP Cases
- Future Case Candidates
  - Reactors
  - Nuclear Materials
  - Nuclear Waste
  - Enforcement Proceedings

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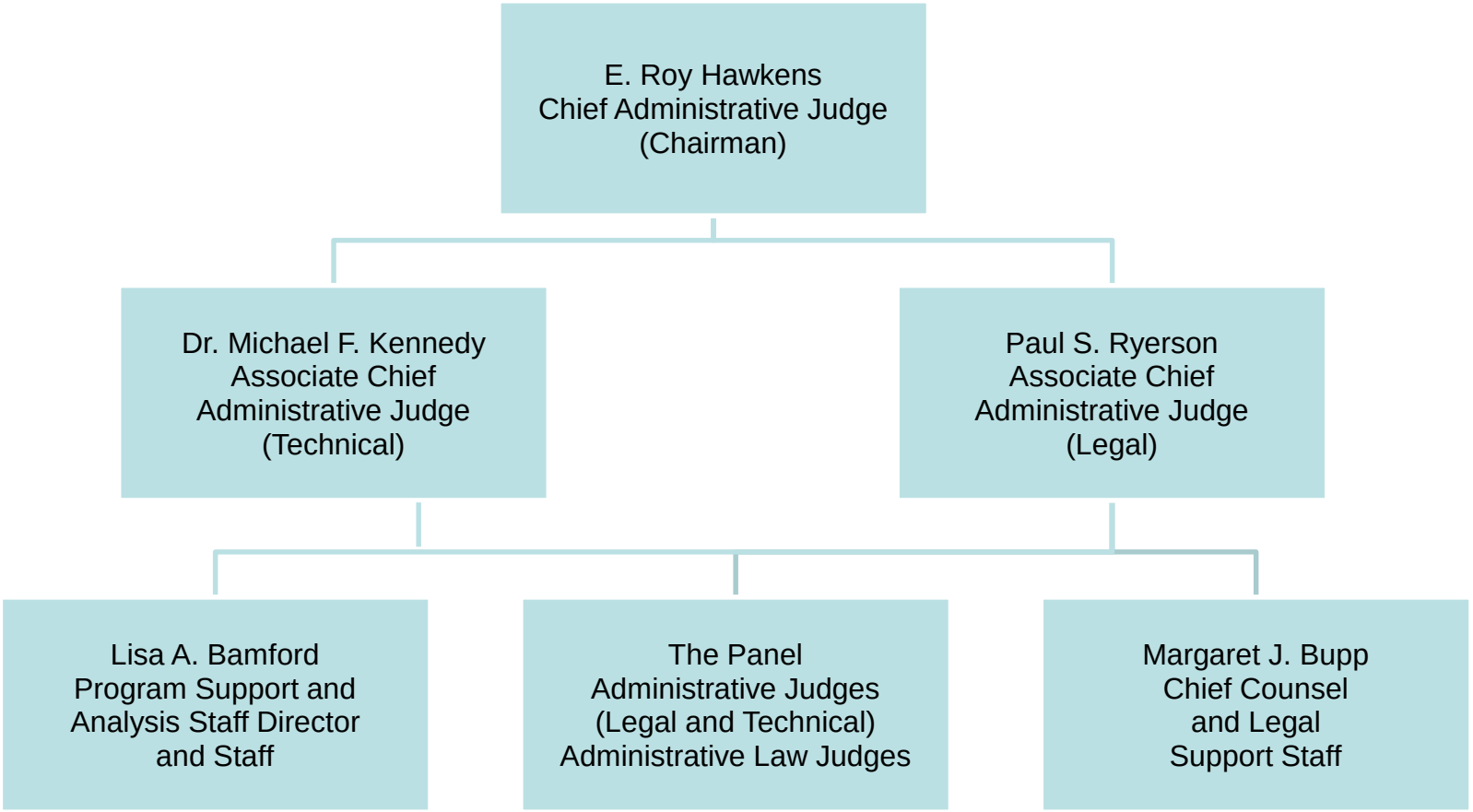
ASLBP Organization Chart



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ASLBP Staffing

- Total Authorized Full-Time Equivalents (FTEs)
  - Fiscal Year 1983 (66) – Post-TMI Licensing “Boom”
  - Fiscal Year 1998 (16) – Pre-“Nuclear Renaissance”
  - Fiscal Year 2010 (50) – Mid-“Nuclear Renaissance”
  - Fiscal Year 2017 (31) – Post-“Nuclear Renaissance”

- Current Administrative Judge Staffing
  - Full-time (6 Legal, 5 Technical)
  - Part-time (3 Legal, 16 Technical; only paid when used)

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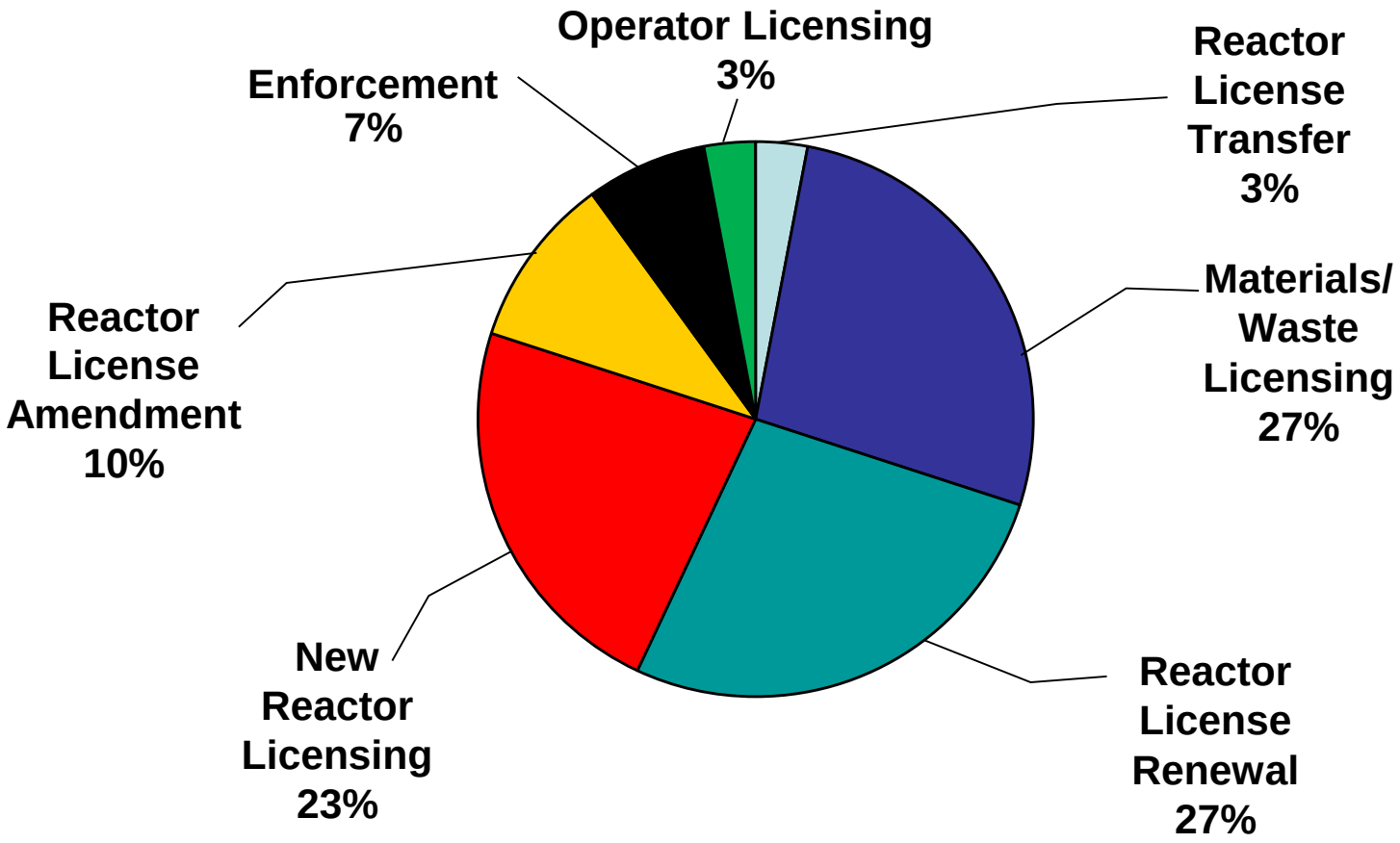
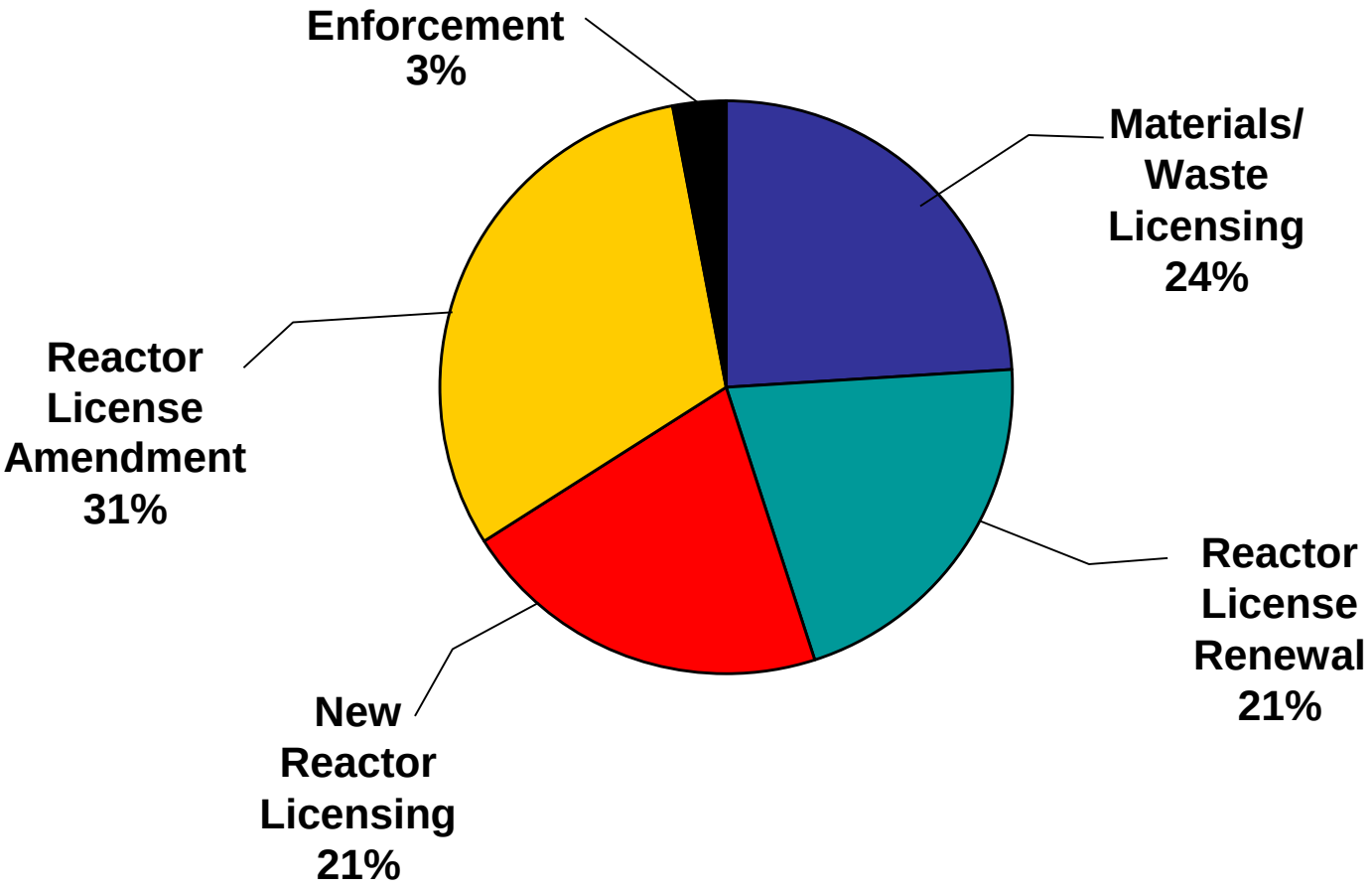
Types of Hearings

- Licensing Proceedings
  - Issuance and Amendment of Reactor/Materials/Waste Licenses
  - Contested or Uncontested/Mandatory
- Enforcement Proceedings
  - Contested Monetary Fines (Civil Penalties)
  - Orders, including Facility Shut-down, License Revocation, and Restrictions on NRC-licensed Activities

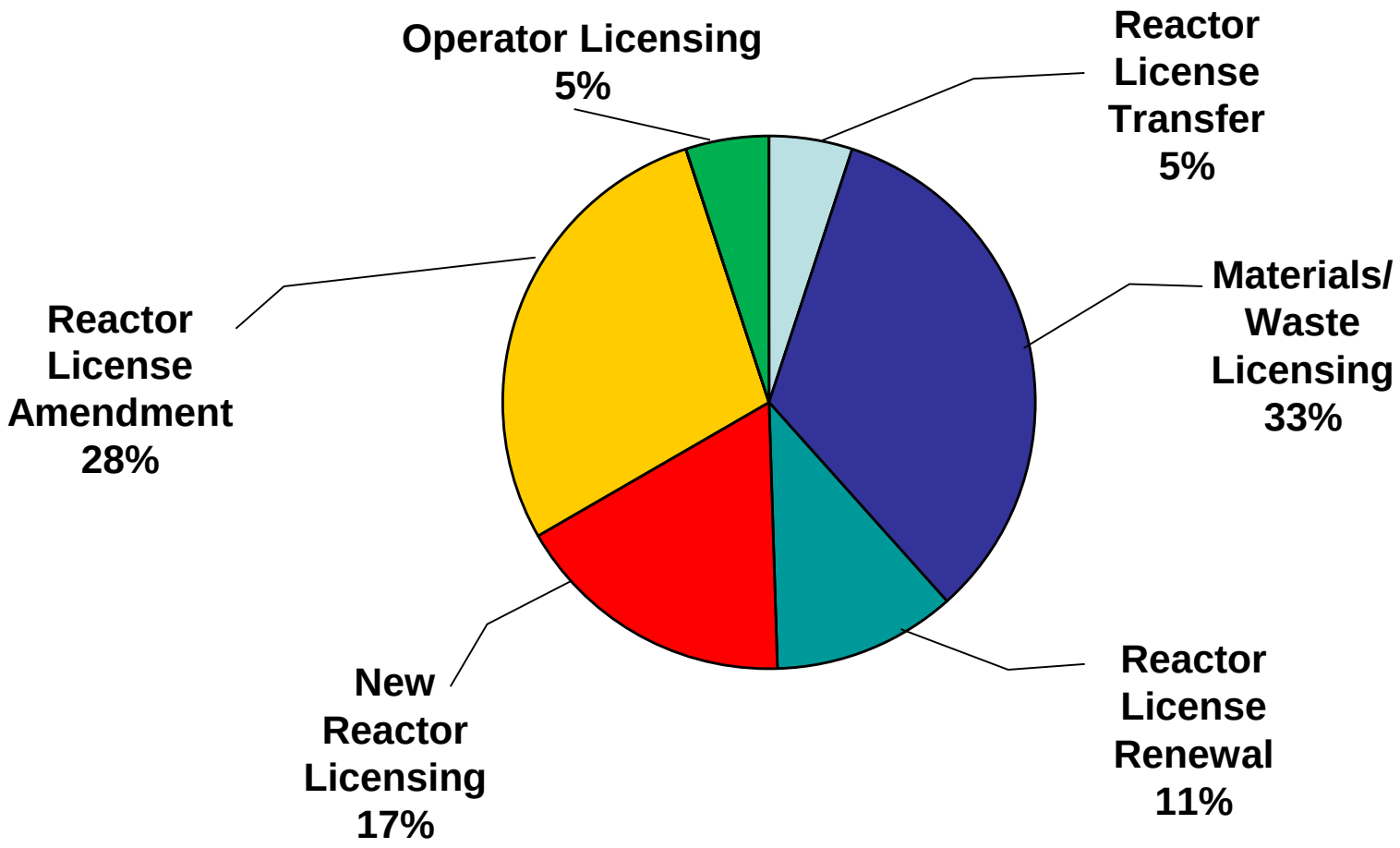
CY2014 Cases



CY2015 Cases



CY2016 Cases



Reactor Case Candidates

- Part 52, Subpart B Design Certification Applications
  - Part 52 (§ 52.51) Provides for Part 2, Subpart O Legislative Hearing by Commission/Presiding Officer
  - Small Modular Reactor (SMR) Design
    - NuScale – Application Submission Imminent
  - Advanced Non-Light Water Reactor Design
    - Terrestrial Energy USA (Molten Salt Reactor) – Oct. 2019 (or Part 50 Construction Permit (CP) Application)
  - Westinghouse AP1000 Design Certification Renewal

Reactor Case Candidates (cont'd)

- Part 52 Combined License (COL) Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) Cases
  - Vogtle 3 & 4/Summer 1 & 2 ITAAC Cases – 2nd Quarter CY2018 and Beyond (81 Fed. Reg. 43,266 (July 1, 2016))
- Part 50/52 Cases
  - Clinch River SMR Part 52 Early Site Permit (ESP) – Application Docketed on 12/30/2016
  - SHINE Medical Technologies Part 50 Operating License (OL) Application – mid-CY2017
  - Northwest Medical Isotopes Part 50 OL Application – TBD
  - Blue Castle Project AP1000s Part 52 ESP Application – CY2017
  - UT Associated Mun. Power. Sys. NuScale SMRs (COL?) – CY2018
  - Bellefonte 1 & 2 Part 50 OL Applications – TBD

Reactor Case Candidates (cont'd)

- License Renewal/Subsequent License Renewal Cases
  - Four Facilities Scheduled to Apply for Initial 20-Year Extensions through CY2022
  - First Subsequent License Renewal Applications for Additional 20-Year Extension – Peach Bottom 2 & 3 - 3rd Quarter CY2018/Surry 1 & 2 - 1st Quarter CY2019
- Power Uprate Requests
  - Nine "Measurement Uncertainty Recapture" Power Uprate Applications (< 2 percent) in CY2017

Reactor Case Candidates (cont'd)

- Decommissioning Cases – Power Reactors
  - Hearing Opportunity Comes with License Amendment Request/ License Termination Plan (LTP) Submission (§ 50.82(a)(10)) (Not Post-Shutdown Decommissioning Activities Report (PSDAR))
    - SAFSTOR Option Defers LTP a Decade (or More)
    - DECON Option Accelerates LTP (Zion 1 & 2, LaCrosse, Vermont Yankee, San Onofre 1, 2, & 3)
- Recent Pre-LTP License Amendment/Exemption Cases
  - Vermont Yankee
    - Emergency Response Data System (CLI-15-20)
    - Emergency Planning Requirements (CLI-16-12)
    - Decommissioning Trust Fund (CLI-16-8/CLI-16-17)

Reactor Case Candidates (cont'd)

- Decommissioning Cases – Non-Power Reactors
  - Hearing Opportunity Comes with License Amendment Request/Decommissioning Plan (DP) Submission Triggering Decommissioning Activities (§ 50.82(b)(5))
    - General Atomics - TRIGA Mark F and Mark I (CY2019)
- License Transfer Cases
  - Part 2, Subpart M Proceedings
    - Susquehanna 1 & 2 (Indirect Transfer)
    - Vermont Yankee Decommissioning (Direct Transfer)

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Reactor Case Candidates (cont'd)

- License Amendment Cases
  - Often Unusual/Unpredictable
    - Pending Seabrook 1 Alkali Silica Reaction (ASR) Amendment
    - Future Byron 1 & 2 Medical Isotope Production Amendment
- Operator Licensing Cases
  - Challenges to Scoring Received on Written and/or Simulator Exams
  - Challenging as Involving Review of Technically Complex, and Sometimes Somewhat Subjective, Judgments (e.g., Charlissa Smith)

Nuclear Materials Case Candidates

- Uranium Milling/Mining/In Situ Recovery Cases
  - Cultural Resource Issues
    - Powertech Initial License (CLI-16-20)
    - Crow Butte Resources Renewal (LBP-16-07 & LBP-16-13)
  - Impact of Wyoming Becoming an Agreement State
    - ~Five Fewer Potential Cases over Next 5+ Years
- Uranium Processing/Fuel Production Facilities
  - Honeywell Uranium Conversion Facility License Renewal – CY2017
  - Global Laser Enrichment Facility in Paducah, KY – TBD

Nuclear Materials Case Candidates (cont'd)

- Decommissioning Cases
  - Hearing Opportunity Comes with DP Submission/ License Amendment Request Triggering Decommissioning Activities
    - Complex Materials Sites
      - Jefferson Proving Ground (U.S. Army Has Submitted 4 DPs Since 1999)
    - Uranium Recovery Sites
      - Rio Algom Ambrosia Lake Site (NM) Section 4 Pond License Termination – CY2017
      - License Amendment Requesting Groundwater Alternate Concentration Limits (ACL)
    - Fuel Cycle Facilities – Partial Decommissioning

Nuclear Waste Case Candidates

- Site-Specific (v. General Licensed) Independent Spent Fuel Storage Installations (ISFSIs)
  - Initial Licenses/Amendments/Renewals/Transfers
- Interim High-Level Waste (HLW) Storage Facilities
  - Waste Control Specialists (WCS) (TX)
    - Application Pending Docketing
    - Environmental Impact Statement Scoping Notice Issued
  - Eddy Lea Energy Alliance (ELEA), LLC (NM)
    - Late 1st Quarter CY2017

Nuclear Waste Case Candidates (cont'd)

"The Mother of All NRC Licensing Proceedings"

Nuclear Waste Case Candidates (cont'd)

- Yucca Mountain HLW Repository Construction Authorization Proceeding
  - Adjudication Suspended Since 2011
  - NRC Staff Has Completed
    - Five-Volume Safety Evaluation Report (Jan. 2015)
    - Supplement to Department of Energy (DOE) Environmental Impact Statement (May 2016)
  - Licensing Support Network (LSN) Library Operational (Aug. 2016) (3.692 million documents)
  - Hearing Restart Requires Congressional Funding/DOE Involvement/Commission Direction

Enforcement Action Case Candidates

- Tend to Be
  - Materials Cases
  - Challenges to
    - NRC Order Prohibiting Individual from Involvement in NRC-licensed Activities
    - Imposition of a Civil Penalty
  - Amenable to Settlement
- Subject to Part 2, Subpart G Formal/Trial-Type Hearing Procedures

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QUESTIONS/DISCUSSION

G. Paul Bollwerk, III

Judge Bollwerk has been a full-time legal member of the Panel since July 1991 and served as Chief Administrative Judge from January 1999 through June 2006. Before being appointed to the Licensing Board Panel, Judge Bollwerk served as an administrative judge on the Atomic Safety and Licensing Appeal Panel, a senior attorney in the NRC Office of the General Counsel, a special assistant U.S. attorney with the Department of Justice, and an associate attorney in the law firm of Gardner Carton & Douglas in Washington, D.C. After graduating from law school, he clerked for a Federal district court judge and a state supreme court judge. Judge Bollwerk is on the faculty of the National Judicial College as a lecturer on managing complex cases and courtroom technology. Judge Bollwerk chaired the mandatory hearings in the AREVA Enrichment Facility and LES materials license cases, as well as the Vogtle early site permit case.

William J. Froehlich

Judge Froehlich was appointed a full-time legal member of the Panel in March 2008. Previously, Judge Froehlich was a member of the senior executive service at the Federal Energy Regulatory Commission. He held a number of key leadership positions during his 32-year career at FERC including Director of the Office of Administrative Litigation, Special Counsel to the Office of Enforcement, Assistant General Counsel for Gas and Oil Litigation and Director of the Financial Regulation Division. He oversaw the agency's trial staff in the adjudication of natural gas, oil pipeline, and electric utility rate cases. He also handled cases involving the importation of liquefied natural gas, the rates and charges for newly constructed pipelines, and the prosecution of cases arising from the Enron trading schemes. He represented the agency and the United States in China and throughout Eastern Europe, where he has lectured foreign regulators and taught classes on administrative law, the privatization of state-owned industries, public utility ratemaking, and the development of independent regulatory structures. Judge Froehlich continues to teach at George Mason University, where he is an adjunct professor of administrative law.

Michael F. Kennedy

B.S., Physics, Canisius College (1970)
M.S., Nuclear Engineering, University of Virginia (1973)
Ph.D., Nuclear Engineering, University of Virginia (1978)

Judge Kennedy was appointed to the Panel as a full-time technical judge in January 2008. In January 2014, he was appointed Associate Chief Administrative Judge (Technical). Previously, he worked for over 30 years in the nuclear industry with a primary focus on licensing and safety analysis for current generation light water reactors, advanced reactor designs, and fuel cycle facilities. During his career, he worked for various nuclear consulting companies, nuclear utility organizations, reactor vendors, and Argonne National Laboratory, holding positions of technical leadership or management. He has provided technical support to the NRC in the license renewal area, performed safety analysis reviews for NRR, and updated regulatory guidance documents for RES and NMSS. Prior to this, he performed Integrated Safety Assessments for a number of fuel cycle facilities as well as supporting development of a centrifuge enrichment facility license application. He was a guest lecturer in light water reactor safety analysis for a course in Dubrovnik sponsored by the International Center for Heat and Mass Transfer. He has authored technical papers on nuclear safety and the application of information technology to managing configuration data for nuclear power plants.