COMMISSION NOTICES
POLICY STATEMENTS

CONDUCT OF PROCEEDINGS

46 FR 28533
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Statement of Policy on Conduct of Licensing Proceedings

I. Background

The Commission has reviewed the docket of the Atomic Safety and Licensing Board Panel (ASLBP) and the current status of proceedings before its individual boards. In a series of public meetings, the Commission has examined at length all major elements in its licensing procedure. It is clear that a number of difficult problems face the agency as it endeavors to meet its responsibilities in the licensing area.

This is especially the case with regard to staff reviews and hearings, where requested, for applications for nuclear power plant operating licenses.

Historically, NRC operating licensing reviews have been completed and the license issued by the time the nuclear plant is ready to operate. Now, for the first time the hearings on a number of operating license applications may not be concluded before construction is completed. This situation is a consequence of the Three Mile Island (TMI) accident, which required a reexamination of the entire regulatory structure. After TMI, for over a year and a half, the Commission's attention and resources were focused on plants which were already licensed to operate and on the preparation of an action plan which specified changes necessary for reactors as a result of the accident.

Although staff review of pending license applications was delayed during this period, utilities which had received construction permits continued to build the authorized plants. The staff is now expediting its review of the applications and an unprecedented number of hearings are scheduled in the next 24 months. Many of these proceedings concern applications for operating licenses. If these proceedings are not concluded prior to the completion of construction, the cost of such delay could reach billions of dollars. The Commission will seek to avoid or reduce such delays whenever measures are available that do not compromise the Commission's fundamental commitment to a fair and thorough hearing process.

Therefore, the Commission is issuing this policy statement on the need for the balanced and efficient conduct of all phases of the hearing process. The Commission appreciates the many difficulties faced by its boards in conducting these contentious and complex proceedings. By and large, the boards have performed very well. This document is intended to deal with problems not primarily of the boards' own making. However, the boards will play an important role in resolving such difficulties.

Individual adjudicatory boards are encouraged to expedite the hearing process by using those management methods already contained in Part 2 of the Commission's Rules and Regulations. The Commission wishes to emphasize though that, in expediting the hearings, the board should ensure that the hearings are fair, and produce a record which leads to high quality decisions that adequately protect the public health and safety and the environment.

Virtually all of the procedural devices discussed in this Statement are currently being employed by sitting boards to varying degrees. The Commission's reemphasis of the use of such tools is intended to reduce the time for completing licensing proceedings. The guidelines set forth below are not to be

considered all inclusive, but rather are to be considered illustrative of the actions that can be taken by individual boards.

II. General Guidance

The Commission's Rules of Practice provide the board with substantial authority to regulate hearing procedures. In the final analysis, the actions, consistent with applicable rules, which may be taken to conduct an efficient hearing are limited primarily by the good sense, judgment, and managerial skills of a presiding board which is dedicated to seeing that the process moves along at an expeditious pace, consistent with the demands of fairness.

Fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations. While a board should endeavor to conduct the proceeding in a manner that takes account of the special circumstances faced by any participant, the fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations. When a participant fails to meet its obligations, a board should consider the imposition of sanctions against the offending party. A spectrum of sanctions from minor to severe is available to the boards to assist in the management of proceedings. For example, the boards could warn the offending party that such conduct will not be tolerated in the future, refuse to consider a filing by the offending party, deny the right to cross-examine or present evidence, dismiss one or more of the party's contentions, impose appropriate sanctions on counsel for a party, or, in severe cases, dismiss the party from the proceeding. In selecting a sanction, boards should consider the relative importance of the unmet obligation, its potential for harm to other parties or the orderly conduct of the proceeding, whether its occurrence is an isolated incident or a part of a pattern or behavior, the importance of the safety or environmental concerns raised by the party, and all of the circumstances. Boards should attempt to tailor sanctions to mitigate the harm caused by the failure of a party to fulfill its obligations and bring about improved future compliance. At an early stage in the proceeding, a board should make all parties aware of the Commission's policies in this regard.

When the NRC staff is responsible for the delay of a proceeding the Chief Administrative Judge, Atomic Safety and Licensing Board Panel, should inform the Executive Director for Operations. The Executive Director for Operations will apprise the Commission in writing of significant delays and provide an explanation. The document will be served on all parties to a proceeding and the board.

III. Specific Guidance

A. Time

The Commission expects licensing boards to set and adhere to reasonable schedules for proceedings. The Boards are advised to satisfy themselves that the 10 CFR 2.711 "good cause" standard for adjusting times fixed by the Board or prescribed by Part 2 has actually been met before granting an extension of time. Requests for an extension of time should generally be in writing and should be received by the Board well before the time specified expires.

B. Consolidated Intervenors

In accordance with 10 CFR 2.715a, intervenors should be consolidated and a lead intervenor designated who has "substantially the same interest that may be affected by the proceedings and who raise[s] substantially the same questions . . . ." Obviously, no consolidation should be ordered that would prejudice the rights of any intervenor.

However, consonant with that condition, single, lead intervenors should be designated to present evidence, to conduct cross-examination, to submit briefs, and to propose findings of fact, conclusions of law, and argument. Where such consolidation has taken place, those functions should not be performed by other intervenors except upon a showing of prejudice to such other intervenors' interest or upon a showing to the satisfaction of the board that the record would otherwise be incomplete.

C. Negotiation

The parties should be encouraged to negotiate at all times prior to and during the hearing to resolve contentions, settle procedural disputes, and better define issues. Negotiations should be monitored by the board through written reports, prehearing conferences, and telephone conferences, but the boards should not become directly involved in the negotiations themselves.

D. Board Management of Discovery

The purpose of discovery is to expedite hearings by the disclosure of information in the possession of the parties which is relevant to the subject matter involved in the proceeding so that issues may be narrowed, stipulated, or eliminated and so that evidence to be presented at hearing can be stipulated or otherwise limited to that which is relevant. The Commission is concerned that the number of interrogatories served in some cases may place an undue burden on the parties particularly the NRC staff, and may, as a consequence, delay the start of the hearing without reducing the scope or the length of the hearing.

The Commission believes that the benefits now obtained by the use of interrogatories could generally be obtained by using a smaller number of better focused interrogatories and by considering a proposed rule which would limit the number of interrogatories a party could file, absent a ruling by the Board that a greater number of interrogatories is justified. Pending a Commission decision on the proposed rule, the Boards are reminded that they may limit the number of interrogatories in accordance with the Commission's rules.

Accordingly, the boards should manage and supervise all discovery, including not only the initial discovery directly following admission of contentions, but also any discovery conducted thereafter. The Commission again endorses the policy of voluntary discovery, and encourages the boards, in consultation with the parties, to establish time frames for the completion of both voluntary and involuntary discovery. Each individual board shall determine the method by which it supervises the discovery process. Possible methods include, but are not limited to, written reports from the parties, telephone conference calls, and status report conferences on the record. In virtually all instances, individual boards should schedule an initial conference with the parties to set a general discovery schedule immediately after contentions have been admitted.

E. Settlement Conference

Licensing boards are encouraged to hold settlement conferences with the parties. Such conferences are to serve the purpose of resolving as many contentions as possible by negotiation. The conference is intended to: (a) have the parties identify those contentions no longer considered valid or important by their sponsor as a result of information generated through discovery, so that such contentions can be eliminated from the proceeding; and (b) to have the parties negotiate a resolution, wherever possible, of all or part of any contention still held valid and important. The settlement conference is not intended to replace the prehearing conferences provided by 10 CFR 2.752a and 2.752.

F. Timely Rulings on Prehearing Matters

The licensing boards should issue timely rulings on all matters. In particular, rulings should be issued on crucial or potentially dispositive issues at the earliest practicable juncture in the proceeding. Such rulings may: eliminate the need to adjudicate one or more subsidiary issues. Any ruling which would affect the scope of an evidentiary presentation should be rendered well before the presentation in question. Rulings on procedural matters to regulate the course of the hearing should also be rendered early.

If a significant legal or policy question is presented on which Commission guidance is needed, a board should promptly refer or certify the matter to the Atomic Safety and Licensing Appeal Board or the Commission. A board should exercise its best judgment to try to anticipate crucial issues which may require such guidance so that the

reference or certification can be made and the response received without holding up the proceeding.

G. Summary Disposition

In exercising its authority to regulate the course of a hearing, the boards should encourage the parties to invoke the summary disposition procedure on issues where there is no genuine issue of material fact so that evidentiary hearing time is not unnecessarily devoted to such issues.

H. Trial Briefs, Prefiled Testimony Outlines and Cross-Examination Plans

All or any combination of these devices should be required at the discretion of the board to expedite the orderly presentation by each party of its case. The Commission believes that cross-examination plans, which are to be submitted to the board alone, would be of benefit in most proceedings. Each board must decide which device or devices would be most fruitful in managing or expediting its proceeding by limiting unnecessary direct oral testimony and cross-examination.

I. Combining Rebuttal and Surrebuttal Testimony

For particular, highly technical issues, boards are encouraged during rebuttal and surrebuttal to put opposing witnesses on the stand at the same time so that each witness will be able to comment immediately on an opposing witness' answer to a question. Appendix A to 10 CFR Part 2 explicitly recognizes that a board may find it helpful to take expert testimony from witnesses on a round-table basis after the receipt in evidence of prepared testimony.

J. Filing of Proposed Findings of Fact and Conclusions of Law

Parties should be expected to file proposed findings of fact and conclusions of law on issues which they have raised. The boards, in their discretion, may refuse to rule on an issue in their initial decision if the party raising the issue has not filed proposed findings of fact and conclusions of law.

K. Initial Decisions

Licensing proceedings vary greatly in the difficulty and complexity of issues to be decided, the number of such issues, and the size of the record compiled. These factors bear on the length of time it will take the boards to issue initial decisions. The Commission expects that decisions not only will continue to be fair and thorough, but also that decisions will issue as soon as practicable after the submission of proposed findings of fact and conclusions of law.

Accordingly, the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel should schedule all board assignments so that after the record has been completed individual Administrative Judges are free to write initial decisions on those applications where construction has been completed. Issuance of such decisions should take precedence over other responsibilities.

IV. Conclusion

This statement on adjudication is in support of the Commission's effort to complete operating license proceedings, conducted in a thorough and fair manner, before the end of construction. As we have noted, that process has not, in the past, extended beyond completion of plant construction. Because of the considerable time that the staff had to spend on developing and carrying out safety improvements at operating reactors during 1979–1980, in the wake of the Three Mile Island accident, this historical situation has been disrupted. To reestablish it on a reliable basis requires changes in the agency review and hearing process, some of which are the subject of this statement.

As a final matter, the Commission observes that in ideal circumstances operating license proceedings should not bear the burden of issues that ours do now. Improvement on this score depends on more complete agency review and decision at the construction permit stage. That in turn depends on a change in industrial practice: submittal of a more nearly complete design by the applicant at the construction permit stage. With this change operating license reviews and public proceedings could be limited essentially to whether the facility in question was constructed in accordance with the detailed design approved for construction and whether significant developments after the date of the construction permit required modifications in the plant.

Dated at Washington, D.C., this 20th day of May 1981.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

46 FR 47906

Published 9/30/81

Statement of Policy on Issuance of Uncontested Fuel Loading and Low Power Testing Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of Policy.

SUMMARY: In October 1979 the Commission suspended its policy that permitted the issuance of nuclear power reactor construction permits and operating licenses by the staff in uncontested cases and directed that no such permits or licenses could be issued except upon prior review by the Commission itself. 44 FR 58559 (October 10, 1979). In the past months, the Commission has revised those procedures in a way designed to improve the licensing process. 46 FR 28627 (May 28, 1981). In this issue of the Federal Register, the Commission is publishing final rules which retain to the Commission itself the decision of whether or not an applicant will be granted authority for commercial operation, i.e., full power operation. These final rules will permit fuel loading and low power (up to 5 percent of rated power) testing to be authorized by the Director of Nuclear Reactor Regulation after a favorable decision by a Licensing Board in a contested case. This Statement announces the Commission's intention that in future uncontested cases full power operation will be authorized by the Commission. However, in such cases, the Director shall authorize fuel loading and low power testing without the need to obtain prior Commission approval.

Dated at Washington, D.C. this 24th day of September, 1981.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

49 FR 36032

Published 9/13/84

Statement of Policy; Investigations, Inspections, and Adjudicatory Proceedings

On August 5, 1983, the Commission set forth interim procedures for handling conflicts between the NRC's responsibility to disclose information to adjudicatory boards and parties, and the NRC's need to protect investigative material from premature public disclosure. "Statement of Policy—Investigations and Adjudicatory Proceedings," 48 FR 36358 (August 10, 1983).

Those interim procedures called for the NRC staff or Office of Investigations (OI), when it felt disclosure of information to an adjudicatory board was required but that unrestricted disclosure could compromise an inspection or investigation, to present the information and its concerns about disclosure to the board *in camera*, without disclosure of the substance of the information to the other parties. A board decision to disclose the information to the parties was appealable to the Commission, and the board was not to order disclosure until the Commission addressed the matter.

That Statement of Policy was to remain in effect until the Commission received and took action on the recommendations of an internal NRC task force established to develop guidelines for reconciling these conflicts in individual cases. The Commission in that Statement also requested public comments on the propriety and desirability of *ex parte in camera*

presentation of information to a board, and suggestions for any better alternatives.

The Task Force submitted its report to the Commission on December 30, 1983. A copy of that report will be placed in the Commission's Public Document Room. The Task Force approved the principles discussed in the Commission's earlier Statement of Policy, and made several recommendations intended to define specifically the responsibilities of the boards, the staff, and OI in presenting disclosure issues for resolution.

The Task Force recommended that the final Policy Statement explain that full disclosure of material information to adjudicatory boards and the parties is the general rule, but that some conflicts between the duty to disclose and the need to protect information will be inevitable. The Task Force further recommended that issues regarding disclosure to the parties be initially determined by the adjudicatory boards with provision for expedited appellate review, and that procedures for the resolution of such conflicts be established by rule. Finally, the Task Force suggested that existing board notification procedures should remain unaffected by the Policy Statement, and that those procedures and Commission guidelines for disclosure of information concerning investigations and inspections should apply to all NRC offices. Those recommendations have been incorporated in this Statement.

In addition, two comments were submitted by members of the public.

One commenter stated that the withholding of information from public disclosure should be confined to the minimum essential to avoid compromising enforcement actions, and that appropriate representatives of each party should be allowed to participate under suitable protective orders in any *in camera* proceeding except in the most exceptional cases.

The other commenter maintained that an *in camera* presentation to the board with only one party present is undesirable and violates the *ex parte* rule. That commenter suggested an alternative of having the attorneys or authorized representatives of parties who have signed a protective agreement present at any *in camera* presentation, with appropriate sanctions for violating the protective agreement.[1]

The Commission, after considering these comments and the report of the Task Force, has decided that it would be appropriate, in order to better explain the Commission's policy in this area, to provide the following explanation of the conflict between the duty to disclose investigation or inspection information to the boards and parties and the need to protect that information:

All parties in NRC adjudicatory proceedings, including the NRC staff, have a duty to disclose to the boards and other parties all new information they acquire which is considered material and relevant to any issue in controversy in the proceeding. Such disclosure is required to allow full resolution of all issues in the proceeding. The Commission expects all NRC offices to utilize procedures which will assure prompt and appropriate action to fulfill this responsibility.

However, the Commission recognizes that there may be conflicts between this responsibility to provide the boards and parties with information and an investigating or inspecting office's need to avoid public disclosure for either or both of two reasons: (1) To avoid compromising an ongoing investigation or inspection; and (2) to protect confidential sources. The importance of protecting information for either of these reasons can in appropriate circumstances be as great as the importance of disclosing the information to the boards and parties.

With regard to the first reason, avoiding compromise of an investigation or inspection, it is important to informed licensing decisions that NRC inspections and investigations are conducted so that all relevant information is gathered for appropriate evaluation. Release of investigative material to the subject of an investigation before the completion of the investigation could adversely affect the NRC's ability to complete that investigation fully and adequately. The subject, upon discoving what evidence the NRC had already acquired and the direction being taken by the NRC investigation, might attempt to alter or limit the direction or the nature or availability of further statements or evidence, and prevent NRC from learning the facts. The failure to ascertain all relevant facts could itself result in the NRC making an uninformed licensing decision. However, the need to protect information developed in investigations or inspections usually ends once the investigation or inspection is completed and evaluated for possible enforcement action.

The second reason for not disclosing investigative material—to protect confidential sources—has a different basis. Individuals sometimes present safety concerns to the NRC only after being assured that their individual identity will be kept confidential. This desire for confidentiality may arise for a number of reasons, including the possibility of harassment and retaliation. Confidential sources are a valuable asset to NRC inspections and investigations. Releasing names to the parties in an adjudication after promising confidentiality to sources would be detrimental to the NRC's overall inspection and investigation activities because other individuals may be reluctant to bring information to the NRC. However, the need to protect confidential sources does not end when the investigation or inspection is completed and evaluated for possible enforcement action.

By this Policy Statement, the Commission is not attempting to resolve the conflict that may arise in each case between the duty to disclose information to the boards and parties and the need to protect that information or its source. The resolution of actual conflicts must be decided on the merits of each individual case. However, the Commission does note that as a general rule it favors full disclosure to the boards and parties, that information should be protected only when necessary, and that any limits on disclosure to the parties should be limited in both scope and duration to the minimum necessary to achieve the purposes of the non-disclosure policy.

The purpose of this Policy Statement is to establish a procedure by which the conflicts can be resolved. The Policy Statement takes over once a determination has been made, under established board notification procedures, that information should be disclosed to the boards and public, but OI or staff believes that the information should be protected. In those cases the Commission has decided that the only workable solution to protect both interests is to provide for an *in camera* presentation to the board by the NRC staff or OI, with no party present. Any other procedure could defeat the purpose of non-disclosure and might actually inhibit the acquisition of information critical to decisions. Allowing the other parties or their representatives to be present in all cases, even under a protective order, could breach promises of confidentiality or allow the subject of an investigation to prematurely acquire information about the investigation. We note in this regard the difficulties of attempting to prevent a party's representative from talking to his client about the relevance of the information and how to respond to it, even under a protective order.

The Commission believes that the boards, using the procedures established in this Policy Statement, can resolve most potential disclosure conflicts once they have been advised of the nature of the information involved, the status of the inspection or investigation, and the projected time for its completion. In many of the cases when the procedures in this Policy Statement are triggered by a concern for premature public disclosure, it may be possible for boards to provide for the timely consideration of relevant matters derived from investigations and inspections through the deferral or rescheduling of issues for hearing. In other instances, the boards may be able to resolve the conflict by placing limitations on the scope of

[1] Both comments also included suggestions regarding matters beyond the scope of this Policy Statement, which is concerned only with establishing a procedure to handle conflicts between the duty to disclose information to the boards and parties and the need to protect that information. For instance, one suggestion was that the NRC impose a more stringent standard in deciding whether information warrants a board notification. Another recommended that the NRC improve the quality of its investigations.

sensitive information is the protection of the confidential source. It is essential that the investigating and prosecuting parties know the identity of a confidential source to physically protect the source during the course of investigative activities and to prevent compromising the source's identity through some inadvertent action by one of the outside investigators or prosecutors. Because it is inappropriate for a source to know the investigative or prosecutorial activities, strategies, or tactics, it is also inappropriate to notify the source that his or her identity is being shared.

4. Circumstances Under Which Confidentiality May Be Revoked

A decision to revoke a grant of confidentiality can only be made by (1) the Commission, (2) the EDO, or (3) the Director, OI. However, the Commission emphasizes that a grant of confidentiality will be revoked only in the most extreme cases. Generally, confidentiality will be revoked only when a confidential source personally takes some action so inconsistent with the grant of confidentiality that the action overrides the purpose behind the confidentiality. For instance, this can happen when the source discloses information in a public forum that reveals his or her status as a confidential source or when he or she has intentionally provided false information to the NRC. Before revoking confidentiality, the Commission will attempt to notify the confidential source of its intent and provide the individual an opportunity to explain why their identity should not be disclosed.

5. Withdrawal of Confidentiality

The NRC official granting confidentiality may withdraw confidentiality without further approval if the confidential source has made such a request in writing and the NRC official has confirmed that the requesting individual is the same person who was granted confidentiality.

6. Conclusion

The Commission views protecting the identity of allegers and confidential sources as an important adjunct to investigative and inspection programs. Therefore, the Commission places great emphasis on protecting the identity of individuals who bring safety concerns to the NRC. However, the Commission recognizes there are limited circumstances when the identity of an alleger or confidential source will be divulged outside the NRC. In these circumstances the Commission will attempt to limit disclosure to the extent possible.

Dated at Rockville, MD, this 17th day of May, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

63 FR 41872
Published 8/5/98
Effective 8/5/98
Comment period expires 10/5/98

Policy on Conduct Of Adjudicatory Proceedings; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: update.

SUMMARY: The Nuclear Regulatory Commission (Commission) has reassessed and updated its policy on the conduct of adjudicatory proceedings in view of the potential institution of a number of proceedings in the next few years to consider applications to renew reactor operating licenses, to reflect restructuring in the electric utility industry, and to license waste storage facilities.

DATES: This policy statement is effective on August 5, 1998, while comments are being received. Comments are due on or before October 5, 1998.

ADDRESSES: Send written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert M. Weisman, Litigation Attorney, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–1696.

Statement of Policy on Conduct of Adjudicatory Proceedings

[CLI–98–12]

I. Introduction

As part of broader efforts to improve the effectiveness of the agency's programs and processes, the Commission has critically reassessed its practices and procedures for conducting adjudicatory proceedings within the framework of its existing Rules of Practice in 10 CFR Part 2, primarily Subpart G. With the potential institution of a number of proceedings in the next few years to consider applications to renew reactor operating licenses, to reflect restructuring in the electric utility industry, and to license waste storage facilities, such assessment is particularly appropriate to ensure that agency proceedings are conducted efficiently and focus on issues germane to the proposed actions under consideration. In its review, the Commission has considered its existing policies and rules governing adjudicatory proceedings, recent experience and criticism of agency proceedings, and innovative techniques used by our own hearing boards and presiding officers and by other tribunals. Although current rules and policies provide means to achieve a prompt and fair resolution of proceedings, the Commission is directing its hearing boards and presiding officers to employ certain measures described in this policy statement to ensure the efficient conduct of proceedings.

The Commission continues to endorse the guidance in its current policy, issued in 1981, on the conduct of adjudicatory proceedings. Statement of Policy on Conduct of Licensing Proceedings, CLI–81–8,13 NRC 452 (May 20, 1981); 46 FR 28533 (May 27, 1981). The 1981 policy statement provided guidance to the Atomic Safety and Licensing Boards (licensing boards) on the use of tools, such as the establishment and adherence to reasonable schedules and discovery management, intended to reduce the time for completing licensing proceedings while ensuring that hearings were fair and produced adequate records. Now, as then, the Commission's objectives are to provide a fair hearing process, to avoid unnecessary delays in the NRC's review and hearing processes, and to produce an informed adjudicatory record that supports agency decision making on matters related to the NRC's responsibilities for protecting public health and safety, the common defense

and security, and the environment. In this context, the opportunity for hearing should be a meaningful one that focuses on genuine issues and real disputes regarding agency actions subject to adjudication. By the same token, however, applicants for a license are also entitled to a prompt resolution of disputes concerning their applications.

The Commission emphasizes its expectation that the boards will enforce adherence to the hearing procedures set forth in the Commission's Rules of Practice in 10 CFR Part 2, as interpreted by the Commission. In addition, the Commission has identified certain specific approaches for its boards to consider implementing in individual proceedings, if appropriate, to reduce the time for completing licensing and other proceedings. The measures suggested in this policy statement can be accomplished within the framework of the Commission's existing Rules of Practice. The Commission may consider further changes to the Rules of Practice as appropriate to enable additional improvements to the adjudicatory process.

II. Specific Guidance

Current adjudicatory procedures and policies provide a latitude to the Commission, its licensing boards and presiding officers to instill discipline in the hearing process and ensure a prompt yet fair resolution of contested issues in adjudicatory proceedings. In the 1981 policy statement, the Commission encouraged licensing boards to use a number of techniques for effective case management including: setting reasonable schedules for proceedings; consolidating parties; encouraging negotiation and settlement conferences; carefully managing and supervising discovery; issuing timely rulings on prehearing matters; requiring trial briefs, pre-filed testimony, and cross-examination plans; and issuing initial decisions as soon as practicable after the parties file proposed findings of fact and conclusions of law. Licensing boards and presiding officers in current NRC adjudications use many of these techniques, and should continue to do so.

As set forth below, the Commission has identified several of these techniques, as applied in the context of the current Rules of Practice in 10 CFR Part 2, as well as variations in procedure permitted under the current Rules of Practice that licensing boards should apply to proceedings. The Commission also intends to exercise its inherent supervisory authority, including its power to assume part or all of the functions of the presiding officer in a given adjudication, as appropriate in the context of a particular proceeding. See, e.g., Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-90-3, 31 NRC 219, 229 (1990). The Commission intends to promptly respond to adjudicatory matters placed before it, and such matters should ordinarily take priority over other actions before the Commissioners.

1. Hearing Schedules

The Commission expects licensing boards to establish schedules for promptly deciding the issues before them, with due regard to the complexity of the contested issues and the interests of the parties. The Commission's regulations in 10 CFR 2.718 provide licensing boards all powers necessary to regulate the course of proceedings, including the authority to set schedules, resolve discovery disputes, and take other action appropriate to avoid delay. Powers granted under § 2.718 are sufficient for licensing boards to control the supplementation of petitions for leave to intervene or requests for hearing, the filing of contentions, discovery, dispositive motions, hearings, and the submission of findings of fact and conclusions of law.

Many provisions in Part 2 establish schedules for various filings, which can be varied "as otherwise ordered by the presiding officer." Boards should exercise their authority under these options and 10 CFR 2.718 to shorten the filing and response times set forth in the regulations to the extent practical in a specific proceeding. In addition, where such latitude is not explicitly afforded, as well as in instances in which sequential (rather than simultaneous) filings are provided for, boards should explore with the parties all reasonable approaches to reduce response times and to provide for simultaneous filing of documents.

Although current regulations do not specifically address service by electronic means, licensing boards, as they have in other proceedings, should establish procedures for electronic filing with appropriate filing deadlines, unless doing so would significantly deprive a party of an opportunity to participate meaningfully in the proceeding. Other expedited forms of service of documents in proceedings may also be appropriate. The Commission encourages the licensing boards to consider the use of new technologies to expedite proceedings as those technologies become available.

Boards should forego the use of motions for summary disposition, except upon a written finding that such a motion will likely substantially reduce the number of issues to be decided, or otherwise expedite the proceeding. In addition, any evidentiary hearing should not commence before completion of the staff's Safety Evaluation Report (SER) or Final Environmental Statement (FES) regarding an application, unless the presiding officer finds that beginning earlier, e.g., by starting the hearing with respect to safety issues prior to issuance of the SER, will indeed expedite the proceeding, taking into account the effect of going forward on the staff's ability to complete its evaluations in a timely manner. Boards are strongly encouraged to expedite the issuance of interlocutory rulings. The Commission further strongly encourages presiding officers to issue decisions within 60 days after the parties file the last pleadings permitted by the board's schedule for the proceeding.

Appointment of additional presiding officers or licensing boards to preside over discrete issues simultaneously in a proceeding has the potential to expedite the process, and the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel (ASLBP) should consider this measure under appropriate circumstances. In doing so, however, the Commission expects the Chief Administrative Judge to exercise the authority to establish multiple boards only if: (1) the proceeding involves discrete and severable issues; (2) the issues can be more expeditiously handled by multiple boards than by a single board; and (3) the multiple boards can conduct the proceeding in a manner that will not unduly burden the parties. Private Fuel Storage, L.L.C. (Private Fuel Storage Facility), CLI-98-7, 47 NRC ____ (1998).

The Commission itself may set milestones for the completion of proceedings. If the Commission sets milestones in a particular proceeding and the board determines that any single milestone could be missed by more than 30 days, the licensing board must promptly so inform the Commission in writing. The board should explain why the milestone cannot be met and what measures the board will take insofar as is possible to restore the proceeding to the overall schedule.

2. Parties' Obligations

Although the Commission expects its licensing boards to set and adhere to reasonable schedules for the various steps in the hearing process, the Commission recognizes that the boards will be unable to achieve the objectives of this policy statement unless the

parties satisfy their obligations. The parties to a proceeding, therefore, are expected to adhere to the time frames specified in the Rules of Practice in 10 CFR Part 2 for filing and the scheduling orders in the proceeding. As set forth in the 1981 policy statement, the licensing boards are expected to take appropriate actions to enforce compliance with these schedules. The Commission, of course, recognizes that the boards may grant extensions of time under some circumstances, but this should be done only when warranted by unavoidable and extreme circumstances.

Parties are also obligated in their filings before the board and the Commission to ensure that their arguments and assertions are supported by appropriate and accurate references to legal authority and factual basis, including, as appropriate, citation to the record. Failure to do so may result in material being stricken from the record or, in extreme circumstances, in a party being dismissed.

3. Contentions

Currently, in proceedings governed by the provisions of Subpart G, 10 CFR 2.714(b)(2)(iii) requires that a petitioner for intervention shall provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] The Commission has stated that a board may appropriately view a petitioner's support for its contention in a light that is favorable to the petitioner, but the board cannot do so by ignoring the requirements set forth in § 2.714(b)(2). Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991). The Commission re-emphasizes that licensing boards should continue to require adherence to § 2.714(b)(2), and that the burden of coming forward with admissible contentions is on their proponent. A contention's proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for the admission of contentions in 10 CFR 2.714(b)(2). The scope of a proceeding, and, as a consequence, the scope of contentions that may be admitted, is limited by the nature of the application and pertinent Commission regulations. For example, with respect to license renewal, under the governing regulations in 10 CFR Part 54, the review of license renewal applications is confined to matters relevant to the extended period of operation requested by the applicant. The safety review is limited to the plant systems, structures, and components (as delineated in 10 CFR 54.4) that will require an aging management review for the period of extended operation or are subject to an evaluation of time-limited aging analyses. See 10 CFR 54.21(a) and (c), 54.29, and 54.30. In addition, the review of environmental issues is limited by rule by the generic findings in NUREG-1427, "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants." See 10 CFR 55.71(d) and 51.95(c).

Under the Commission's Rules of Practice, a licensing board may consider matters on its motion only where it finds that a serious safety, environmental, or common defense and security matter exists. 10 CFR 2.760a. Such authority is to be exercised only in extraordinary circumstances. If a board decides to raise matters on its own initiative, a copy of its ruling, setting forth in general terms its reasons, must be transmitted to the Commission and the General Counsel. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-24, 14 NRC 614 (1981). The board may not proceed further with sua sponte issues absent the Commission's approval. The scope of a particular proceeding is limited to the scope of the admitted contentions and any issues the Commission authorizes the board to raise sua sponte.

Currently, 10 CFR 2.714a allows a party to appeal a ruling on contentions only if (a) the order wholly denies a petition for leave to intervene (i.e., the order denies the petitioner's standing or the admission of all of a petitioner's contentions) or (b) a party other than the petitioner alleges that a petition for leave to intervene or a request for a hearing should have been wholly denied. Although the regulation reflects the Commission's general policy to minimize interlocutory review, under this practice, some novel issues that could benefit from early Commission review will not be presented to the Commission. For example, matters of first impression involving interpretation of 10 CFR Part 54 may arise as the staff and licensing board begin considering applications for renewal of power reactor operating licenses. Accordingly, the Commission encourages the licensing boards to refer rulings or certify questions on proposed contentions involving novel issues to the Commission in accordance with 10 CFR 2.730(f) early in the proceeding. In addition, boards are encouraged to certify novel legal or policy questions related to admitted issues to the Commission as early as possible in the proceeding. The Commission may also exercise its authority to direct certification of such particular questions under 10 CFR 2.718(i). The Commission, however, will evaluate any matter put before it to ensure that interlocutory review is warranted.

4. Discovery Management

Efficient management of the pre-trial discovery process is critical to the overall progress of a proceeding. Because a great deal of information on a particular application is routinely placed in the agency's public document rooms, Commission regulations already limit discovery against the staff. See, e.g., 10 CFR 2.720(h), 2.744. Under the existing practice, however, the staff frequently agrees to discovery without waiving its rights to object to discovery under the rules, and refers any discovery requests it finds objectionable to the board for resolution. This practice remains acceptable.

Application in a particular case of procedures similar to provisions in the 1993 amendments to Rule 26 of the Federal Rules of Civil Procedure or informal discovery can improve the efficiency of the discovery process among other parties. The 1993 amendments to Rule 26 provide, in part, that a party shall provide certain information to other parties without waiting for a discovery request. This information includes the names and addresses, if known, of individuals likely to have discoverable information relevant to disputed facts and copies or descriptions, including location, of all documents or tangible things in the possession or control of the party that are relevant to the disputed facts. The Commission expects the licensing boards to order similar disclosure (and pertinent updates) if appropriate in the circumstances of individual proceedings. With regard to the staff, such orders shall provide only that the staff identify the witnesses whose testimony the staff intends to present at hearing. The licensing boards should also consider requiring the parties to specify the issues for which discovery is necessary, if this may narrow the issues requiring discovery.

Upon the board's completion of rulings on contentions, the staff will establish a case file containing the application and any amendments to it, and, as relevant to the application, any NRC report and any correspondence

[1] "[A]t the contention filing stage[,] the factual support necessary to show that a genuine dispute exists need not be in affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion." Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, Final Rule, 54 FR 33168, 33171 (Aug. 11, 1989).

between the applicant and the NRC. Such a case file should be treated in the same manner as a hearing file established pursuant to 10 CFR 2.1231. Accordingly, the staff should make the case file available to all parties and should periodically update it.

Except for establishment of the case file, generally the licensing board should suspend discovery against the staff until the staff issues its review documents regarding the application. Unless the presiding officer has found that starting discovery against the staff before the staff's review documents are issued will expedite the hearing, discovery against the staff on safety issues may commence upon issuance of the SER, and discovery on environmental issues upon issuance of the FES. Upon issuance of an SER or FES regarding an application, and consistent with such limitations as may be appropriate to protect proprietary or other properly withheld information, the staff should update the case file to include the SER and FES and any supporting documents relied upon in the SER or FES not already included in the file.

The foregoing procedures should allow the boards to set reasonable bounds and schedules for any remaining discovery, e.g., by limiting the number of rounds of interrogatories or depositions or the time for completion of discovery, and thereby reduce the time spent in the prehearing stage of the hearing process. In particular, the board should allow only a single round of discovery regarding admitted contentions related to the SER or the FES, and the discovery respective to each document should commence shortly after its issuance.

III. Conclusion

The Commission reiterates its long-standing commitment to the expeditious completion of adjudicatory proceedings while still ensuring that hearings are fair and produce an adequate record for decision. The Commission intends to monitor its proceedings to ensure that they are being concluded in a fair and timely fashion. The Commission will take action in individual proceedings, as appropriate, to provide guidance to the boards and parties and to decide issues in the interest of a prompt and effective resolution of the matters set for adjudication.

Dated at Rockville, Maryland, this 28th day of July, 1998.

For the Nuclear Regulatory Commission.
Annette Vietti-Cook,
Assistant Secretary of the Commission.

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Published 5/28/02
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Enhancing Public Participation in NRC Meetings; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its public meeting policy to enhance public participation in NRC meetings. This policy brings consistency to NRC public meetings planned by headquarters and regional staff by introducing a categorization system whereby the public can anticipate the level of participation that will be provided for during an upcoming meeting. The NRC has identified three categories of public meetings it convenes and has described information availability and follow-up effort associated with each meeting category. Information such as agendas, background documents, and meeting summaries will be available in ADAMS and at NRC's web site for certain categories of meetings. The policy also provides guidance on teleconferencing, security, and other administrative issues related to NRC staff-sponsored public meetings. This revision is in response to suggestions made by the public at a meeting held in April, 2001, and to fulfill the NRC's strategic goal of increasing public confidence.

EFFECTIVE DATE: May 28, 2002.

FOR FURTHER INFORMATION CONTACT: Mindy Landau or Ramin Assa, Office of the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–8703 or (301) 415–8709 respectively.

Commission Policy Statement on Staff Meetings Open to the Public

A. Purpose

The Nuclear Regulatory Commission has had a formal policy regarding open meetings since 1978 which has been revised periodically, and most recently on September 20, 2000. This paper presents a revised policy that the Nuclear Regulatory Commission (NRC) will follow in opening meetings between the agency staff and one or more outside persons to public observation and participation. The revised policy continues NRC's longstanding practice of providing the public with substantial information on its activities and of conducting business in an open manner, while balancing the need for the NRC staff to exercise its regulatory and safety responsibilities without undue administrative burden. The revised policy also sets forth a plan for categorizing meeting types that will provide a framework for enhancing public participation. The public will be notified of the category of the meeting, and thereby the level of participation to be anticipated, via the NRC's Public Meeting Notice System on its web site. Implementing guidance will be issued to the NRC staff. This meeting policy is a matter of NRC discretion and may be departed from as circumstances warrant.

B. Definition

A public meeting is a planned, formal encounter open to public observation and participation between one or more NRC staff members and one or more external stakeholders, with the expressed intent of discussing substantive issues that are directly associated with the NRC's regulatory and safety responsibilities. An external stakeholder is any individual who is not:

1. An NRC employee;
2. Under contract to the NRC;
3. Acting as an official consultant to the NRC;
4. Acting as an official representative of an agency of the executive, legislative, or judicial branch of the U.S. Government (except on matters where the agency is subject to NRC regulatory oversight);
5. Acting as an official representative of a foreign government;
6. Acting as an official representative of a State or local government or Tribal official (except when specific NRC licensing or regulatory matters are discussed).

C. Applicability and Exemptions

1. This policy applies solely to NRC staff-sponsored and conducted meetings