

TEMPLATE KEY:

- Brackets (“[” and “]”) designate information that will need to be inserted into the document when it is issued in a specific proceeding.
- Curly brackets (“{” and “}”) designate optional information of two possible kinds: (1) cases where the NRC is considering one or more possible alternative procedures to be adopted in the final general procedures, or (2) cases where a particular procedure would only apply under certain conditions. Contextual statements will make clear which of these two cases apply.
- Angle brackets (“<” and “>”) designate information about the template that is for information only and will not appear in the document that is issued in a specific proceeding.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

[List Commissioners]

)	
In the Matter of)	
)	
LICENSEE)	Docket No. 52-0XX-COL
)	
(Facility Name))	
)	

CLI-XX-__

MEMORANDUM AND ORDER

Today we granted the request of ____ for a hearing concerning [licensee's] intent to operate [facility name and unit number].¹ We admitted __ contention(s), which assert(s) that the facility as constructed does not, or upon completion of construction will

¹ CLI-XX-XX, XX NRC __ (DATE) (slip op.).

not, comply with the acceptance criteria set forth in the combined license.² This order provides a schedule and procedures for the conduct of the hearing, which will take place before either an Atomic Safety and Licensing Board or a single legal judge (assisted as appropriate by technical advisors), as determined by the Chief Administrative Judge.³

I. BACKGROUND

The Atomic Energy Act of 1954, as amended (AEA), grants us discretion to establish appropriate procedures for conducting a hearing on whether a facility as constructed complies, or upon completion will comply, with the acceptance criteria in the combined license, provided that we explain our reasoning for establishing those procedures.⁴ As provided by 10 C.F.R. § 2.310(j), the procedures for a hearing on conformance with the acceptance criteria are designated by the Commission on a case-specific basis. We developed these procedures based on our rules of practice in 10 C.F.R. Part 2, primarily Subparts C and L, adopting or modifying them as necessary to conform to the expedited schedule and specialized nature of these hearings, as well as to fit the particular issues raised by [petitioner's] contention(s). We modeled the

² The acceptance criteria are part of the inspections, tests, analyses, and acceptance criteria (ITAAC) set forth in Appendix [X] of the combined license.

<³ While the Commission has decided that it will be the presiding officer for the purposes of deciding on whether to grant hearing requests, designating hearing procedures, and determining whether there is adequate protection during interim operation, the Commission has not yet decided whether the Commission, a licensing board, or a single legal judge (assisted by technical advisors) will conduct the evidentiary hearing for admitted contentions. For the sake of simplicity and to obtain public comment on procedures that specifically pertain to interactions between the Commission and a licensing board (or single legal judge assisted as appropriate by technical advisors), this draft template is written as if a licensing board or single legal judge will conduct the evidentiary hearing. If the Commission ultimately chooses to conduct the evidentiary hearing, this template will be modified accordingly.>

⁴ AEA § 189a.(1)(B)(iv), 42 U.S.C. § 2239(a)(1)(B)(iv).

procedures on the existing rules in Subparts C and L because they have proven effective in promoting a fair and efficient process in adjudications and there is a body of experience and precedent interpreting and applying these provisions.⁵ In addition, using the existing rules to the extent possible could make it easier for potential participants in the hearing to apply the procedures in this order if they are already familiar with the existing rules. To the extent that we have modified these rules, we provide the basis for our decision below. And to the extent that we have adopted the rules with little or no change, we incorporate by reference the basis for their promulgation in 10 C.F.R. Part 2.

II. HEARING SCHEDULE

Because of circumstances and features unique to ITAAC hearings, some modifications to our hearing procedures are warranted. An ITAAC hearing is necessarily under narrow time constraints because for such hearings, the AEA provides that the “Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the [notice of intended operation] or the anticipated date for initial loading of fuel into the reactor, whichever is later.”⁶ ITAAC hearings will also be narrowly focused on the admitted contentions, which themselves are confined by the terms of the ITAAC.

⁵ The procedures and schedule imposed by this order are based on a set of general procedures that were approved by the Commission after the consideration of comments from [members of the public, licensees, and state and local governmental entities]. See [*Federal Register* notice announcing final procedures and providing responses to comments]; [*Federal Register* notice soliciting comments on draft procedures]. {*If the Commission makes case-specific modifications to these general procedures, then also state:* As explained below, the Commission has modified these general procedures to tailor them to the specific circumstances of this proceeding.}

⁶ AEA § 189a.(1)(B)(v), 42 U.S.C. § 2239(a)(1)(B)(v).

To meet our expectation for a timely decision on the admitted contention[s], we have established a “strict deadline” for the issuance of the initial decision that may only be extended upon a showing that “unavoidable and extreme circumstances” necessitate a delay.⁷ In addition, the presiding officer may extend the strict deadline only after notifying the Commission of its decision with an explanation of why “unavoidable and extreme circumstances” necessitate a delay. The Commission expects that the presiding officer will make this notification at the earliest practicable opportunity after the presiding officer determines that an extension is necessary.

In addition to this strict deadline, we have established “default deadlines,” which are requirements to which the parties must conform. Default deadlines, however, may be modified by the presiding officer for good cause. Target dates that have not been designated as a “strict deadline” or a “default deadline” should be considered milestones, which are not requirements, but the presiding officer is expected to adhere to these milestones to the best of its ability in an effort to reach a timely decision on this/ese matter(s). The presiding officer, however, may revise the milestones in its discretion, with input from the parties, keeping in mind the strict deadline for the overall proceeding.

The presiding officer shall hold a prehearing conference and issue an initial scheduling order. The milestone for the prehearing conference is that it be held within 7 days of this order and the milestone for the initial scheduling order is that it be issued within 3 days of the prehearing conference. An oral hearing will be held unless all the parties to the proceeding agree that an oral hearing is not necessary.

⁷ See Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998). This policy statement was also published in the *Federal Register* on August 5, 1998. 63 Fed. Reg. 41,872.

The schedule for this hearing is provided in the table below. While we have set an aggressive schedule in order to satisfy the Congressionally-mandated goal for completion of the hearing, we believe that this schedule is feasible and will allow the presiding officer and the parties a fair opportunity to develop a sound record for decision.

In the general ITAAC hearing procedures, the Commission adopted two alternative hearing schedule tracks for hearings involving testimony. The only difference between these two tracks is whether both pre-filed initial and rebuttal testimony is permitted or whether only pre-filed initial testimony is permitted. After considering the admitted contentions and the information developed so far, the Commission has chosen to use the hearing track involving {both pre-filed initial and rebuttal testimony *OR* only pre-filed initial testimony without rebuttal testimony}. [Commission states the bases for its choice of hearing track.]

[If the Commission modifies the dates in the general hearing track schedule, the Commission explains the basis for these modifications.]

Draft Template B: Procedures for Hearings Involving Testimony

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Event	Target Date	Target Date	Target Date Type
	<i>Track 1⁸</i>	<i>Track 2</i>	
Prehearing Conference	Within 7 days of grant of hearing request	Within 7 days of grant of hearing request	Milestone
Scheduling Order	Within 3 days of prehearing conference	Within 3 days of prehearing conference	Milestone
Document Disclosures; Identification of Witnesses; and NRC Staff Informs the Presiding Officer and Parties of its Decision on Whether to Participate as a Party	15 days after grant of hearing request	15 days after grant of hearing request	Default Deadline
Pre-filed Initial Testimony	35 days after grant of hearing request	35 days after grant of hearing request	Milestone
Pre-filed Rebuttal Testimony	15 days after initial testimony	No rebuttal	Milestone
Proposed Questions; Motions for Cross-Examination/Proposed Cross-Examination Plans	7 days after rebuttal testimony	7 days after initial testimony	Milestone
Answers to Motions for Cross-Examination	5 days after motion for cross-examination OR oral answer to motion presented just prior to the beginning of the hearing	5 days after motion for cross-examination OR oral answer to motion presented just prior to the beginning of the hearing	Milestone
Oral Hearing	15 days after rebuttal testimony	15 days after initial testimony	Milestone
Joint Transcript Corrections	7 days after hearing	7 days after hearing	Milestone
Findings (if needed)	15 days after hearing or such other time as the presiding officer directs	15 days after hearing or such other time as the presiding officer directs	Milestone
Initial Decision	30 days after hearing	30 days after hearing	Strict Deadline

<⁸ Only one column—either the Track 1 or Track 2 column—will be included in this table in the case-specific order issued by the Commission setting forth the procedures for the hearing, depending on which Track is selected by the Commission.>

III. HEARING PROCEDURES

The procedures set forth below are exclusive—meaning no procedures other than those stated in this order apply to this proceeding. Thus, if a provision of 10 C.F.R. Part 2 is not expressly referenced in this order, then it does not apply to this proceeding. Except as otherwise noted in this order, the presiding officer may not alter these hearing procedures.⁹

A. General Motions

To accommodate the expedited timeline for the hearing, the time period for filing and responding to motions must be shortened from the time periods set forth in Subpart C. Therefore, all motions, except for motions for leave to file new or amended contentions or claims of incompleteness filed after the deadline, shall be filed within 7 days after the occurrence or circumstance from which the motion arises, or earlier, as prescribed by the presiding officer. Answers to motions shall be filed within 7 days after service of the motion, or earlier, as prescribed by the presiding officer. Except for the filing deadlines, motions and answers shall otherwise conform to the requirements of 10 C.F.R. § 2.323(a) through (d). The provisions of 10 C.F.R. § 2.323(g) and (h) apply to this proceeding.

B. Motions for Extension of Time

1. Except as otherwise provided, the presiding officer may, for good cause shown, extend the time fixed or the period of time prescribed for an act that is required or allowed to be done at or within a specified time. A

⁹ See 10 C.F.R. § 2.310(j) (providing that the procedures for an ITAAC hearing will be designated by the Commission in each proceeding).

showing of good cause must be based on an event occurring before the deadline in question.

2. Motions for extension of time shall be filed as soon as possible, and, absent exceptional circumstances, motions for extension of time will not be entertained if they are filed more than two business days after the moving party discovers the event that gives rise to the motion.¹⁰
3. When determining whether the requesting party has demonstrated good cause, the presiding officer shall take into account the factors in 10 C.F.R. § 2.334(b):
 - a. Whether the requesting party has exercised due diligence to adhere to the schedule;
 - b. Whether the requested change is the result of unavoidable circumstances; and
 - c. Whether the other parties have agreed to the change and the overall effect of the change on the schedule of the case.
4. In furtherance of the statutory direction regarding the expeditious completion of the hearing, “good cause” is to be interpreted strictly, and a showing of “unavoidable and extreme circumstances” is required for more than very minor extensions of time. Because good cause will be interpreted strictly, meritorious motions will likely be based on events outside the party’s control.

¹⁰ Consistent with practice under 10 C.F.R. § 2.307, a motion for extension of time might be filed shortly after a deadline has passed, e.g., an unanticipated event on the filing deadline prevented the participant from filing. See Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,571 (final rule).

C. Motions/Petitions for Reconsideration and Motions for Clarification

{The NRC requests comment on the following options. OPTION 1: Motions for reconsideration are governed by 10 C.F.R. § 2.323(e), except that the motion must be filed within 7 days of the action for which reconsideration is requested and the answer is due within 7 days of service of the motion. Petitions for reconsideration are governed by 10 C.F.R. § 2.345, except that the petition must be filed within 7 days of the date of the decision and the answer is due within 7 days of service of the petition. These regulatory provisions adequately govern reconsideration and the Commission declines to limit their use before obtaining sufficient experience with the ITAAC hearing process.

OR

OPTION 2: Motions for reconsideration are governed by 10 C.F.R. § 2.323(e), except that the motion must be filed within 7 days of the action for which reconsideration is requested and the answer is due within 7 days of service of the motion. Petitions for reconsideration are governed by 10 C.F.R. § 2.345, except that the petition must be filed within 7 days of the date of the decision and the answer is due within 7 days of service of the petition. In addition, motions and petitions for reconsideration are only allowed for a presiding officer's initial decision and Commission decisions on appeal of a presiding officer's initial decision. Reconsideration is allowed in these narrow instances because these are the most important decisions in the proceeding and motions/petitions for reconsideration of these decisions do not prevent them from taking effect.

Reconsideration is not permitted for other decisions because (1) reconsideration is unlikely to be necessary for other decisions, which are interlocutory in nature, (2) the resources necessary to prepare, review and rule on requests for reconsideration would take time away from preparing for the hearing, (3) parties who disagree with an order of the presiding officer may seek redress through the process for appeals and petitions for review, and (4) the appellate process will not cause undue delay given the expedited

nature of the proceeding. Motions for clarification are allowed for these other decisions, but to prevent them from becoming de facto motions for reconsideration, motions for clarification will be limited to ambiguities in a presiding officer order. In addition, a motion for clarification may explain the basis for the perceived ambiguity and the possible interpretations of the purportedly ambiguous language, but the motion for clarification may not advocate for a particular interpretation of the presiding officer order.

OR

OPTION 3: Motions and petitions for reconsideration are not permitted because they consume the resources of the parties, the presiding officer, and the Commission without compensating benefit. Reconsideration is unlikely to be necessary for many decisions, and the resources necessary to prepare, review and rule on requests for reconsideration of interlocutory decisions would take time away from preparing for the hearing. In addition, parties who disagree with an order of the presiding officer or the Commission may seek redress through the process for appeals and petitions for review, and the appellate process will not cause undue delay given the expedited nature of the proceeding. Motions for clarification are allowed, but to prevent them from becoming de facto motions for reconsideration, motions for clarification will be limited to ambiguities in a presiding officer order. In addition, a motion for clarification may explain the basis for the perceived ambiguity and the possible interpretations of the purportedly ambiguous language, but the motion for clarification may not advocate for a particular interpretation of the presiding officer order.}

D. Motions to Dismiss/Motions for Summary Disposition

Other than a joint motion to dismiss supported by all of the parties, motions to dismiss and motions for summary disposition are prohibited. The time frame for the hearing is already time limited, and the resources necessary to prepare, review and rule on a motion to dismiss or motion for summary disposition would take time away from

preparing for the hearing and likely would not outweigh the potential for error should it later be decided on appeal that a hearing was warranted.

E. Disclosures/Presiding Officer Notifications/Role of the NRC Staff

1. *Disclosures*

a. The disclosure requirements in this proceeding, which are set forth in Section E.1.b through h, are for the most part adopted from 10 C.F.R. § 2.336, with limited changes tailored to this proceeding. These procedures are well established in NRC adjudicatory practice, and they ensure that all of the parties will have a fair opportunity to obtain information relevant to the contested issues in the proceeding.¹¹ The disclosure requirements in this proceeding differ from § 2.336 in the following respects:

- (i) NRC staff disclosures are based on the provisions of § 2.336(a), as modified for this proceeding, rather than on § 2.336(b). The Commission has chosen to use § 2.336(a), instead of § 2.336(b), as the basis for the NRC staff's disclosure requirements because (1) the categories of documents covered by § 2.336(a) and § 2.336(b) are likely to be the same in the ITAAC hearing context, and (2) it is reasonable in an ITAAC hearing to impose a witness identification requirement on the NRC staff with its initial

¹¹ For further discussion of the Commission's choice to limit disclosures to those provided pursuant to 10 C.F.R. § 2.336, see [*Federal Register* notice announcing final procedures and providing responses to comments.]

disclosures since initial testimony is due soon after initial disclosures.

- (ii) The witness identification requirement is clarified to explicitly include potential witnesses whose knowledge provides support for a party's claims or positions.
 - (iii) Initial disclosures in this proceeding are due 15 days from the order granting the hearing request rather than 30 days as provided by § 2.336(a). This reduction in time is necessary to support the expedited ITAAC hearing schedule.
 - (iv) Disclosure updates will be due every 14 days (instead of monthly) to support the expedited ITAAC hearing schedule.
- b. Within 15 days of the date of this order, all parties, including the NRC staff, shall, without further order or request from any party, disclose and provide:
- (i) The name, and, if known, the address and telephone number of any person, including any expert, upon whose opinion or knowledge the party bases its claims and contentions and may rely upon as a witness, and a copy of the analysis or other authority upon which that person bases his or her opinion;
 - (ii) A copy of all documents and data compilations in the possession, custody, or control of the party that are relevant to the contentions;

- (iii) A copy (for which there is no claim of privilege or protected status) of all tangible things (e.g., books, publications and treatises) in the possession, custody or control of the party that are relevant to the contention; and
 - (iv) A list of documents otherwise required to be disclosed for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.
- c. In recognition of the time-sensitive nature of this proceeding, and to ensure that disclosures are timely made, each party and the NRC staff shall make its disclosures in a manner calculated to reach the other parties by the date that disclosures are due using the fastest means possible, preferably electronically, by providing an ADAMS accession number or a working hyperlink, or by e-mailing the document, as applicable. For documents that are too large for email service but which can be segmented into smaller documents that can be emailed, segmentation must be pursued if this is necessary to have the document delivered by the date that disclosures are due. If the disclosures cannot be sent electronically, the parties shall either fax, hand-deliver them, or send them via overnight mail by the date that disclosures are due. The parties should confer with each other to determine which method of expedited delivery is preferred/most practicable.
- d. When any document, data compilation, or other tangible thing that must be disclosed is publicly available from ADAMS or a working hyperlink, including the NRC Web site at <http://www.nrc.gov>, a

sufficient disclosure would be the hyperlink or ADAMS accession number, the title, and a page reference to the relevant document, data compilation, or tangible thing.

- e. Documents delivered to other parties must be in electronic form in accordance with the [current E-Filing guidance]. An exemption from the requirement to provide an electronic document can be sought from the presiding officer using the procedures of 10 C.F.R. § 2.302(g).
- f. Each party and the NRC staff shall make its initial disclosures based on the information and documentation then reasonably available to it. A party, including the NRC staff, is not excused from making the required disclosures because it has not fully completed its investigation of the case, it challenges the sufficiency of another entity's disclosures, or another entity has not yet made its disclosures. All disclosures under this section must be accompanied by a certification (by sworn affidavit) that all relevant materials required by this section have been disclosed, and that the disclosures are accurate and complete as of the date of the certification.
- g. The duty of disclosure under this section is continuing. Parties must update their disclosures every 14 days after initial disclosures. The disclosure update shall be limited to documents subject to disclosure under this section and does not need to include documents that are developed, obtained, or discovered during the 7 days before the due date. Disclosure updates shall include any documents subject to disclosure that were not

included in any previous disclosure update. If there have been no changes since the previous disclosure update, the party shall submit a notice to that effect. The duty to update disclosures relevant to an admitted contention ends when the presiding officer issues a decision resolving the contention, or at such other time as may be specified by the presiding officer.

- h. 10 C.F.R. § 2.336(e) and (g) apply without modification. 10 C.F.R. § 2.336(f) applies without modification, except that the presiding officer for challenges to NRC staff determinations on access to safeguards information (SGI) under the “Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information [SUNSI] and Safeguards Information for Contention Preparation” (SUNSI-SGI Access Order) that was issued concurrently with the notice of intended operation, is as described in the SUNSI-SGI Access Order.

2. *Role of the NRC staff*

- a. 10 C.F.R. § 2.1202(a) applies to this proceeding.
- b. The NRC staff is not required to be a party to the proceeding unless the presiding officer determines that the resolution of any issue in the proceeding would be aided materially by the NRC staff’s participation in the proceeding as a party and orders the NRC staff to participate as a party for the identified issue. In the event that the presiding officer determines that the NRC staff’s participation is necessary, the presiding officer shall issue an order identifying the issue(s) on which the NRC staff is to participate as well as setting forth the basis for the determination

that NRC staff participation will materially aid in resolution of the issue(s).

- c. Within 15 days of the date of this order, the NRC staff shall notify the presiding officer and the parties whether it desires to participate as a party, and identify the contentions on which it wishes to participate as a party. If the NRC staff desires to participate as a party thereafter, the NRC staff shall notify the presiding officer and the parties, identify the contentions on which it wishes to participate as a party, and make the disclosures required above at the same time.
- d. The NRC staff shall have all the rights and responsibilities of a party with respect to the admitted contentions on which the NRC staff will participate.
- e. *{In lieu of the above three paragraphs, the Commission may make the following determination on a case-specific basis: The Commission has determined that the NRC staff's participation in this matter is essential to a complete record. Therefore, the NRC staff shall participate as a party to the proceeding and shall have all the rights and responsibilities of a party with respect to the admitted contention[s].}*

3. *Hearing File*

- a. The Commission has chosen not to make § 2.1203 applicable to this proceeding, and the NRC staff is thereby not required to produce a hearing file for this proceeding.

4. *Requests for Access to SUNSI or SGI*

- a. The provisions regarding access to SUNSI (including, but not limited to, proprietary, confidential commercial, and security-related information) and SGI in the SUNSI-SGI Access Order apply to all participants (including admitted parties)¹² subject to the following modifications/clarifications:
 - i. For an admitted party seeking access to SUNSI or SGI relevant to the admitted contentions, the 10 C.F.R. § 2.336 disclosures process described above will be used in lieu of the SUNSI-SGI Access Order. As part of the disclosures process, a party seeking SUNSI or SGI related to an admitted contention would first seek access from the party possessing the SUNSI or SGI. Any disputes among the parties over access to SUNSI would be resolved by the presiding officer, and any disputes over access to SGI would be resolved in accordance with 10 C.F.R. § 2.336(f).
 - ii. The timeliness standard for requests for access to SUNSI or SGI is the later of (a) 10 days from the date that the

¹² In other proceedings, the provisions of the SUNSI-SGI Access Order do not apply to admitted parties. See *South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-24, 72 NRC 451, 461-62 (2010). However, this proceeding differs from most NRC proceedings because there is no hearing file, and disclosures in this proceeding are limited to those documents relevant to the admitted contentions. See *id.* at 462 n.70 (explaining that broader disclosure and hearing file requirements provide information to parties to support new contentions). Because the disclosure process in this proceeding does not allow admitted parties to access SUNSI or SGI for the purposes of formulating contentions unrelated to admitted contentions, the Commission has decided to apply the provisions of the SUNSI-SGI Access Order to admitted parties.

existence of the SUNSI or SGI document becomes public information, or (b) 10 days from the availability of new information giving rise to the need for the SUNSI or SGI to formulate the contention.

- iii. Any contentions in this proceeding that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than [the number of days given under the final ITAAC hearing procedures for filing new or amended contentions but no more than the 25 days given in other proceedings for filing contentions after receipt of SUNSI or SGI] after the requestor is granted access to that information.
- iv. Any requests for review of NRC staff determinations on access to SUNSI or SGI must be filed with the presiding officer identified in the SUNSI-SGI Access Order.¹³

5. *No Other Discovery Permitted*

- a. We expect that the required disclosures, pre-filed testimony and evidence, and the opportunity to submit written questions to the presiding officer will provide a sufficient foundation for the parties' positions and the presiding officer's ruling in this proceeding, as they do in other informal NRC adjudications. We find that any

<¹³ The NRC requests comment on which body should be the presiding officer for rulings on requests for review of NRC staff access determinations under the SUNSI-SGI Access Order. These options are further discussed in the template for the SUNSI-SGI Access Order and the Federal Register notice announcing the proposed general ITAAC hearing procedures.>

information that might be gained by conducting formal discovery using the procedures in 10 C.F.R. Part 2, Subpart G likely would not justify the time and resources necessary to gain that information, particularly considering the limited time frame in which to conduct the proceeding. Accordingly, the disclosures set forth above are the sole means of discovery in this proceeding. Depositions, interrogatories, and other forms of discovery provided under 10 C.F.R. Part 2, Subpart G are not permitted.

6. *Notification of Relevant New Developments in the Proceeding*

- a. Given the potential for circumstances to change over the course of this unique proceeding, we remind the parties of their continuing obligation to notify the other parties, the presiding officer, and the Commission of relevant new developments in the proceeding.¹⁴

7. *Additional Notification Procedures for Admitted Contentions*

- a. The AEA and NRC regulations permit a hearing to go forward on the predictive question of whether one or more of the acceptance criteria in the combined license “will not be” met.¹⁵ Additionally, a licensee might choose to re-perform an inspection, test, or analysis for ITAAC maintenance or to dispute an admitted contention.¹⁶ In addition, events subsequent to the performance

¹⁴ *USEC Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 470 (2006).

¹⁵ See AEA § 189a.(1)(B), 42 U.S.C. § 2239(a)(1)(B); 10 C.F.R. §§ 2.309(f)(1)(vii), 2.340(c).

¹⁶ The AEA provisions on combined licenses and ITAAC were added by the Energy Policy Act of 1992 (EPAct), Public Law No. 102-486. A suggestion made in the legislative history of the EPAct is that re-performing the ITAAC would be a simpler way (continued . . .)

of an ITAAC might be relevant to the continued validity of the earlier ITAAC performance. As a consequence, it is possible for the factual predicate of an admitted contention to change over the course of this proceeding, thus impacting the contention or the hearing schedule. To account for this possibility, and to ensure that the presiding officer, the Commission, and the parties are timely notified of a change in circumstances, we establish the following additional procedures for contentions that might be affected by such an event.

- b. If the licensee submits an ITAAC closure notification (10 C.F.R. § 52.99(c)(1)) for an admitted contention, then the licensee also shall notify the presiding officer (or the Commission, if the matter is before the Commission) and the parties on the same day that the ITAAC closure notification is submitted. The notice shall state the effect that the ITAAC closure notification has on the proceeding, including the effect of the notification on the evidentiary record, and whether the notification renders moot, or otherwise resolves, the admitted contention(s). This notice requirement applies as long as there is a contested proceeding in existence on the relevant ITAAC (including any period in which an appeal of an initial decision may be filed or during the

(. . . continued)

to resolve disputes involving competing eyewitness testimony. 138 Cong. Rec. S1143-44 (Feb. 6, 1992) (statement of Sen. Johnston). In addition, ITAAC re-performance might occur as part of the licensee's maintenance of the ITAAC, and might also result in an ITAAC post-closure notification.

consideration of an appeal if an appeal is filed). Within 7 days of service of the licensee's notice, the other parties shall file an answer providing their views on the effect that the ITAAC closure notification has on the proceeding, including the effect of the notification on the evidentiary record, and whether the notification renders moot, or otherwise resolves the admitted contention(s). However, the intervenor is not required in this 7-day timeframe to address whether it intends to file a new or amended contention. In the interest of timeliness, the presiding officer may, in its discretion, take action to determine the notification's effect on the proceeding (e.g., hold a prehearing conference, set an alternate briefing schedule) before the 7-day deadline for answers.

- c. ITAAC post-closure notifications: If the licensee submits an ITAAC post-closure notification (10 C.F.R. § 52.99(c)(2)) for an admitted contention, then the licensee also shall notify the presiding officer (or the Commission, if the matter is before the Commission) and the parties on the same day that the ITAAC post-closure notification is submitted. The notice shall state the licensee's view of the effect that the ITAAC post-closure notification has on the proceeding, including the effect of the notification on the evidentiary record, and whether, in the licensee's view, the notification renders moot, or otherwise resolves, the admitted contention(s). This notice requirement applies as long as there is a contested proceeding in existence on the relevant ITAAC (including any period in which an appeal of an initial decision may be filed or during the consideration of an appeal if an appeal is

filed). Within 7 days of service of the licensee's notice, the other parties shall file an answer providing their views on the effect that the ITAAC post-closure notification has on the proceeding, including the effect of the notification on the evidentiary record, and whether the notification renders moot, or otherwise resolves the admitted contention(s). However, the petitioner is not required in this 7-day timeframe to address whether it intends to file a new or amended contention. In the interest of timeliness, the presiding officer may, in its discretion, take action to determine the notification's effect on the proceeding (e.g., hold a prehearing conference, set an alternate briefing schedule) before the 7-day deadline for answers.

- d. ITAAC re-performance: If the license re-performs the ITAAC associated with an admitted contention, then information and documents concerning this re-performance are subject to the standard disclosure and notification requirements, including the mandatory disclosures obligation, the ITAAC post-closure notification requirement in 10 C.F.R. § 52.99(c)(2), and the licensee's continuing obligation to notify the other parties, the presiding officer, and the Commission of relevant new developments in the proceeding.¹⁷ If the licensee notifies the presiding officer (or the Commission, if the matter is before the Commission) and the parties of information concerning re-

¹⁷ *USEC*, CLI-06-10, 63 NRC at 470.

performance of an ITAAC, then the notice shall state the licensee's view of the effect that the ITAAC re-performance has on the proceeding, including the effect of the notification on the evidentiary record, and whether, in the licensee's view, the notification renders moot, or otherwise resolves the admitted contention(s). Within 7 days of service of the licensee's notice, the other parties shall file an answer providing their views on the effect that the ITAAC re-performance has on the proceeding, including the effect of the notification on the evidentiary record, and whether the notification renders moot, or otherwise resolves the admitted contention(s). However, the petitioner is not required in this 7-day timeframe to address whether it intends to file a new or amended contention. In the interest of timeliness, the presiding officer may, in its discretion, take action to determine the notification's effect on the proceeding (e.g., hold a prehearing conference, set an alternate briefing schedule) before the 7-day deadline for answers.

8. *Additional Notification Procedures for Pending Contentions*
 - a. For reasons similar to those described above in the context of imposing additional notification procedures for admitted contentions, the factual predicate of a pending contention may change between submission of the contention and the ruling on its admissibility. Therefore, the Commission is establishing the following additional notification procedures for pending contentions to ensure that the presiding officer, the Commission,

and the parties are timely notified of a relevant change in circumstances.

- b. To ensure that the presiding officer, the Commission, and the other parties stay fully informed of the status of challenged ITAAC as a proposed contention is being considered, any answers to the proposed contention from the NRC staff and the licensee must discuss any changes in the status of challenged ITAAC.
- c. After answers are filed, the parties must notify the presiding officer, the Commission, and the other parties in a timely fashion as to any changes in the status of a challenged ITAAC up to the time that the presiding officer rules on the admissibility of the contention. This would include notifying the presiding officer, the Commission and the other parties of information related to re-performance of an ITAAC that might bear on the proposed contention. In addition, after answers are filed, the licensee must notify the presiding officer, the Commission, and the other parties of the submission of any ITAAC closure notification or ITAAC post-closure notification for a challenged ITAAC. This notice must be filed on the same day that the ITAAC closure notification or ITAAC post-closure notification is submitted to the NRC.

F. Hearing Requests, Intervention Petitions, and Motions for Leave to File New or Amended Contentions or Claims of Incompleteness Filed After the Original Deadline

- 1. *Presiding Officer:* Hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness after the original deadline must be filed with the Commission.

- a. The Commission will rule upon all hearing requests, intervention petitions, and motions for leave to file new contentions or claims of incompleteness that are filed after the original deadline. If the Commission grants the hearing request, intervention petition, or motion for leave to file new contentions, the Commission will designate the hearing procedures for the newly-admitted contentions and will determine whether there will be adequate protection during interim operation with respect to the newly-admitted contentions. If the Commission determines that a new or amended claim of incompleteness demonstrates a need for additional information in accordance with 10 C.F.R. § 2.309(f)(1)(vii), the Commission will designate separate procedures for resolving the claim.
- b. For motions for leave to file amended contentions, the Commission may delegate rulings on such contentions to a licensing board or a single legal judge (assisted as appropriate by technical advisors). In such situations, a Commission ruling may not be necessary to lend predictability to the hearing process because the Commission provided guidance on the admissibility of the relevant issues when it ruled on the original contention. If the Commission delegates a contention admissibility ruling and the presiding officer admits the amended contention, then the Commission will still make the adequate protection determination for interim operation. In addition, the hearing procedures governing the adjudication of the original contention also apply to the amended contention if admitted by the presiding officer.

Furthermore, the deadline for an initial decision on the amended contention (which is a strict deadline) is the same date as the deadline for an initial decision on the original contention.

2. *Good Cause Required, as Defined in 10 C.F.R. § 2.309(c)*

a. Hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed after the original deadline will not be entertained absent a determination by the Commission or the presiding officer that the participant has demonstrated good cause by showing that:

- (i) The information upon which the filing is based was not previously available;
- (ii) The information upon which the filing is based is materially different from information previously available; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information. To be deemed timely, hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the original deadline must be filed within {*The NRC requests comment on the following options: 20 days OR 30 days OR some period in between 20 and 30 days*} of the availability of the information upon which the filing is based. To be deemed timely, motions for leave to file new or amended claims of incompleteness under 10 C.F.R. § 2.309(f)(1)(vii) must be filed within {*The NRC requests comment on the following options: 20 days OR 30 days*}

OR some period in between 20 and 30 days} of the
challenged 10 C.F.R. § 52.99(c) notification.

3. *Additional Requirements*

- a. Hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness filed after the original deadline must meet the requirements of 10 C.F.R. § 2.309(f)(1)(i) through (v) and 10 C.F.R. § 2.309(f)(1)(vii). The requirements in 10 C.F.R. § 2.309(f)(1)(vi) do not apply to this proceeding.
- b. The requirements of Sections [VI.B, VIII.B.5.g and VIII.C.5] of the ____ design certification rule continue to apply to this proceeding.
- c. If the participant has not already satisfied the requirements for standing, the participant must demonstrate that it meets the requirements of 10 C.F.R. § 2.309(d). Additionally, the provisions of 10 C.F.R. § 2.309(h) apply to this proceeding. However, discretionary intervention pursuant to § 2.309(e) does not apply to this proceeding because § 2.309(a) requires a showing of standing and contention admissibility in an ITAAC hearing, and § 2.309(a) does not provide a discretionary intervention exception as it provides for other proceedings.
- d. Any declarations of eyewitnesses or expert witnesses offered in support of contention admissibility need to be signed by the eyewitness or expert witness in accordance with 10 C.F.R. § 2.304(d). If declarations are not signed, their content will be considered, but they will not be accorded the weight of an eyewitness or an expert witness, as applicable, with respect to

satisfying the *prima facie* showing required by 10 C.F.R.

§ 2.309(f)(1)(vii). The purpose of this provision is to ensure that a position that is purportedly supported by an expert witness or an eyewitness is actually supported by that witness.

4. *Effect of Hearing Requests, Intervention Petitions, and New or Amended Contentions Filed After the Original Deadline on Interim Operation*
 - a. If the proponent of a hearing request, intervention petition, or new or amended contention filed after the original deadline argues that the information raised in the new or amended contention, intervention petition, or hearing request will affect adequate protection during interim operation, then, in order for its views to be considered by the Commission before the Commission makes the interim operation determination, the proponent shall provide its views on this issue, including the time periods and modes of operation in which the adequate protection concern arises, at the same time it submits the hearing request, intervention petition, or motion for leave to file a new or amended contention.¹⁸
 - b. Because the Commission's interim operation determination is a technical finding, a proponent's views regarding adequate protection during interim operation must be supported with alleged facts or expert opinion, including references to the specific sources and documents on which it relies. Any expert witness or

¹⁸ A claim of incompleteness does not bear on interim operation because interim operation is intended to address whether operation shall be allowed notwithstanding the petitioner's *prima facie* showing, while a claim of incompleteness is premised on the petitioner's inability to make a *prima facie* showing.

eyewitness declarations, including a statement of the qualifications and experience of the expert, must be signed in accordance with 10 C.F.R. § 2.304(d). The probative value that the NRC accords to a proponent's position on adequate protection during interim operation will depend on the level and specificity of support provided by the proponent, including the qualifications and experience of each expert providing expert opinion.

5. *Answers*

- a. Answers to hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness filed after the original deadline shall be filed within *{The NRC requests comment on the following options: 15 days OR 25 days OR some period in between 15 and 25 days}* of service of the hearing request, intervention petition, or motion for leave to file a new or amended contention or claim of incompleteness.
- b. Any answers to the proffered contention from the NRC staff and the licensee shall include their views regarding the impact of the hearing request, intervention petition, or new or amended contention(s) on adequate protection during interim operation, including the licensee's plans, if any, to propose mitigation measures to ensure adequate protection during interim operation. NRC staff filings addressing interim operation should address any terms and conditions that should be imposed to assure adequate protection during the interim period. Because the Commission's interim operation determination is a technical finding, the NRC

staff's and the licensee's views regarding adequate protection during interim operation must be supported with alleged facts or expert opinion, including references to the specific sources and documents on which they rely. Any expert witness or eyewitness declarations, including a statement of the qualifications and experience of the expert, must be signed in accordance with 10 C.F.R. § 2.304(d). The probative value that the NRC accords to the NRC staff's or the licensee's position on adequate protection during interim operation will depend on the level and specificity of support provided, including the qualifications and experience of each expert providing expert opinion.

- c. Replies to answers are not permitted. If the licensee's answer addresses proposed mitigation measures to assure adequate protection during interim operation, however, the NRC staff and the proponent of the hearing request, intervention petition, or new or amended contention filed after the original deadline may, within 20 days of service of the licensee's answer, file a response that addresses only the effect these proposed mitigation measures have on adequate protection during interim operation.¹⁹

¹⁹ This procedure, which is intended to ensure fairness and a sound record for decision, differs from the process for responding to mitigation measures proposed by the licensee in its answer to the original hearing request because of the greater need for expedited decision making for contentions submitted after the original deadline. The Commission intends to make the adequate protection determination for interim operation by scheduled fuel load, if possible. For new issues raised after the original deadline, there is less time to achieve this goal, so an expedited process is necessary.

6. *Timing for Decision on Hearing Requests, Intervention Petitions, and Motions for Leave to File New or Amended Contentions or Claims of Incompleteness Filed After the Original Deadline*

- a. Unless we extend the time for our review, we will rule on a hearing request, intervention petition, or motion for leave to file a new or amended contention or claim of incompleteness filed after the original deadline within 30 days of the filing of answers. If a decision on the admissibility of an amended contention is delegated to a licensing board or a single legal judge (assisted as appropriate by technical advisors), we expect the presiding officer to rule on the amended contention(s) within 30 days of the filing of answers. In the event the presiding officer cannot issue its ruling within 30 days, the presiding officer shall issue a notice advising the Commission and the parties of the expected date of decision.
- b. A Commission interim operation determination need not be made in conjunction with a ruling on a hearing request, intervention petition, or new or amended contention.

G. Statements of Position, Testimony, Exhibits, and Oral Hearing

1. *Pre-filed Statements of Position, Testimony, and Evidence*

- a. The parties may file initial written statements of position and written testimony with supporting affidavits on the admitted contentions by the date set by the presiding officer.
- b. *{If pre-filed rebuttal is allowed: The parties may file written responses and rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants by the date set by the presiding officer.}*

- c. The parties may file proposed questions for the presiding officer to consider propounding to the persons sponsoring the testimony by the date set by the presiding officer. *{If pre-filed rebuttal is not allowed: Because pre-filed rebuttal is not allowed, parties may also propose questions for their own witnesses to respond to the other parties' filings.}* The presiding officer shall follow the procedures set forth in 10 C.F.R. § 2.1207(a)(3)(iii) for proposed questions. In the sound exercise of its discretion, the presiding officer need not ask all (or any) questions that the parties request the presiding officer to consider propounding to the witnesses.
- d. Initial written statements of position *{and written responses, if applicable}* may be filed in the form of proposed findings. This would allow the parties to draft their post-hearing findings of fact and conclusions of law by updating their pre-hearing filings. Also, if the parties choose this option, the presiding officer should consider whether it might be appropriate to dispense with the filing of written findings of fact and conclusions of law after the hearing.

2. *Motions in Limine and Motions to Strike*

- a. The admitted contentions are narrowly focused on discrete technical issues, and we expect the parties' evidentiary submissions to be likewise narrowly focused. Given this, and in order to expedite the proceeding, written motions *in limine* or

motions to strike are not permitted.²⁰ The presiding officer is capable of judging the relevance and persuasiveness of the arguments, testimony, and evidence without excluding them from the record, and the parties may address the relevance or admissibility of arguments, testimony, or evidence in their pre- and post-hearing filings, or at the hearing.

3. *Motions for Cross-Examination*

- a. By the date set by the presiding officer, a party may file a motion with the presiding officer to permit cross-examination by the party on particular admitted contentions. The motion shall be accompanied by a cross-examination plan containing the information set forth in 10 C.F.R. § 2.1204(b) and the party requesting cross-examination shall follow the procedures described in that section.
- b. Written answers to motions for cross-examination are due by the date set by the presiding officer. Alternatively, if travel arrangements for the hearing interfere with the ability of the parties and the presiding officer to file or receive documents, an answer may be delivered orally at the hearing location just prior to the start of the hearing.
- c. The due dates for motions for cross-examination and answers thereto, and whether answers to motions for cross-examination

²⁰ Collectively, written motions *in limine* and motions to strike are written motions to exclude another party's arguments, testimony, or evidence.

will be in written form or delivered orally, shall be addressed by the presiding officer and the parties at the prehearing conference.²¹

- d. As provided by 10 C.F.R. § 2.1204(b)(3), the presiding officer shall allow cross-examination by the parties only if the presiding officer determines that it is necessary to ensure the development of an adequate record for decision. The presiding officer shall allow cross-examination upon motion of a party seeking to cross-examine a person providing eyewitness testimony. The Commission expects that the presiding officer will closely manage and control cross-examination. The presiding officer need not, and should not, allow cross-examination to continue beyond the point at which it is useful.

4. *Oral Hearing*

- a. The oral hearing will be conducted in accordance with 10 C.F.R. § 2.1207(b).

H. Post-Hearing Filings and Initial Decision

1. *Transcript Corrections*

- a. The parties shall file joint proposed transcript corrections by the date set by the presiding officer. Because the Commission

²¹ The Commission contemplates that motions for cross-examination and cross-examination plans will ordinarily be due 7 days after the filing of the {initial testimony *OR* rebuttal testimony *if written rebuttal testimony is allowed*}, and any written answers will ordinarily be due 5 days thereafter. Because cross-examination plans are filed non-publicly, answers would only address the public motion, which would likely include less detail. This justifies the shorter deadline for answers and the reasonableness of having answers be delivered orally.

contemplates that joint transcript corrections will be filed within 7 days after the hearing, transcripts must be sent to the parties on an expedited basis after the hearing.

2. *Closing the Record*

- a. After ruling on proposed transcript corrections, the presiding officer shall close the record.

3. *Reopening the Record*

- a. { *The NRC requests comment on the following options.*

OPTION 1: The NRC's existing rule in 10 C.F.R. § 2.326 will apply to any motion to reopen the record.

OR

OPTION 2: Motions to reopen the record will be entertained only with respect to the submission of new information related to a previously admitted contention. The NRC's existing rule in 10 C.F.R. § 2.326 will apply to any such motion. A motion to reopen is not required for a hearing request, intervention petition, or motion for leave to file a new or amended contention filed after the original deadline because the purposes served by the reopening provisions are addressed by the requirements applying to hearing requests, intervention petitions, and motions for leave to file a new or amended contentions filed after the original deadline.²²}

²² Timeliness concerns are addressed by 10 C.F.R. § 2.309(c), and the *prima facie* showing requirement addresses concerns regarding newly raised issues being significant and substantiated. *Compare* 10 C.F.R. § 2.326(a)(2)-(3) (requiring that a (continued . . .)

4. *Findings of Fact and Conclusions of Law*

a. *{The NRC requests comment on the following options.*

OPTION 1: No later than 15 days after the hearing or such other time as the presiding officer directs, each party shall file written proposed findings of fact and conclusions of law on the contentions addressed at the hearing that conform to the format requirements in 10 C.F.R. § 2.712(c). The presiding officer, in its discretion, may dispense with proposed findings of fact and conclusions of law for some or all of the hearing issues on its own motion, or upon a joint agreement supported by all of the parties.

OR

OPTION 2: Proposed findings of fact and conclusions of law are not allowed unless the presiding officer determines they are necessary. The presiding officer may limit the scope of proposed findings of fact and conclusions of law to certain specified issues. Written proposed findings of fact and conclusions of law shall be filed no later than 15 days after the hearing or such other time as the presiding officer directs and shall conform to the format requirements in 10 C.F.R. § 2.712(c).}

(. . . continued)

motion to reopen address a significant safety or environmental issue and demonstrate that a materially different result would be or would have been likely) *with* 10 C.F.R. § 2.309(f)(1)(vii) (requiring that a contention in an ITAAC hearing “show[] *prima facie*, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety”).

5. *Initial Decision*

- a. The initial decision shall be issued in accordance with, and is subject to, the provisions of 10 C.F.R. § 2.340(c), (f), and (j), and § 2.1210, except that § 2.1210(a) is modified so that the initial decision in this proceeding constitutes the final action of the Commission within 120 days after the initial decision is issued (unless action is taken in accordance with § 2.1210(a)(1)-(3)). This modification from 40 days to 120 days is to make this provision consistent with the 120-day period provided in 10 C.F.R. § 2.341(a)(2).
- b. The initial decision must be issued by [DATE]. This is a strict deadline.

I. **Commission Review of Presiding Officer Decisions**

1. 10 C.F.R. § 2.311 does not apply to this proceeding, but is replaced by the provisions in Section I.2 of this Order. 10 C.F.R. § 2.341 applies with the exception of 10 C.F.R. § 2.341(f). The matters addressed by § 2.341(f) are governed by Sections I.2 and I.3 of this Order. 10 C.F.R. § 2.1212 applies to this proceeding.

2. *Interlocutory Review*

- a. Appeals as of right:
 - (i) Parties or petitioners may appeal to the Commission a presiding officer order with respect to a request for access to SUNSI (including, but not limited to, proprietary, confidential commercial, and security-related information) or SGI. Because of the expedited nature of the proceeding, such an appeal shall be filed within 10 days

after service of the order. The appeal shall be initiated by the filing of a notice of appeal and accompanying supporting brief. Any party or petitioner may file a brief in opposition within 10 days after service of the appeal. The supporting brief and any answer shall conform to the requirements of 10 C.F.R. § 2.341(c)(3). A presiding officer order denying a request for access to SUNSI or SGI may be appealed by the requestor only on the question of whether the request should have been granted. A presiding officer order granting a request for access to SUNSI or SGI may only be appealed on the question of whether the request should have been denied in whole or in part. However, such a question with respect to SGI may only be appealed by the NRC staff, and such a question with respect to SUNSI may be appealed only by the NRC staff or by a party whose interest independent of the proceeding would be harmed by the release of the information.

b. Petitions for interlocutory review:

(i) *{ The NRC requests comment on the following options:*

OPTION 1: No other requests for interlocutory review of presiding officer decisions will be entertained. Interlocutory review of decisions other than on requests for access to SUNSI or SGI are unnecessary and unproductive given the expedited nature of the proceeding.

OR

OPTION 2: All other requests for interlocutory review of presiding officer decisions must meet the requirements of 10 C.F.R. § 2.341, including a demonstration that interlocutory review is warranted under 10 C.F.R.

§ 2.341(f)(2). Except in the case of decisions on access to SUNSI or SGI, interlocutory review will be disfavored because of the expedited nature of an ITAAC hearing.}

3. *Certified Questions/Referred Rulings*

- a. The Commission recognizes that there may be unusual cases that merit a presiding officer certifying a question or referring a ruling, notwithstanding the potential for delay. Therefore, the provisions regarding certified questions or referred rulings in 10 C.F.R. §§ 2.323(f) and 2.341(f)(1) apply to this proceeding. However, the proceeding is not stayed by the presiding officer's referral of a ruling or a certification of a question. Where practicable, the presiding officer should first rule on the matter in question and then seek Commission input in the form of a referred ruling to minimize delays in the proceeding during the pendency of the Commission's review.

J. Stays of Decisions or Actions

1. 10 C.F.R. §§ 2.342 and 2.1213 are applicable to this proceeding with the following exceptions:
 - a. The deadline in § 2.342 for filing either a stay application or an answer to a stay application is shortened to 7 days.
 - b. The deadline in § 2.1213(c) to file an answer supporting or opposing a stay application is modified to 7 days.

- c. A request to stay the effectiveness of the Commission's decision on interim operation will not be entertained. The Commission's decision on interim operation becomes final agency action once the NRC staff makes the finding under 10 C.F.R. § 52.103(g) that the acceptance criteria are met and issues an order allowing interim operation.

K. Additional Provisions

- 1. *The following provisions in 10 C.F.R. Part 2 apply to this hearing as written and in accordance with Commission case law, except as otherwise noted:*
 - a. 10 C.F.R. § 2.4 (Definitions): with the clarification that this proceeding is considered a "contested proceeding."
 - b. 10 C.F.R. § 2.8 (Information collection requirements: OMB approval).
 - c. 10 C.F.R. § 2.111 (Prohibition on sex discrimination).
 - d. 10 C.F.R. § 2.302 (Filing of documents): with the exception that subsections (b)(1) and (d)(2), which relate to first-class mail delivery, do not apply. When the Commission or the presiding officer has approved a method other than electronic filing through the E-Filing system, documents filed in this proceeding must be transmitted either by fax, e-mail, hand delivery, or overnight mail to ensure expedited delivery. Use of overnight mail will only be allowed if fax, e-mail, or hand delivery is impractical. In addition, for documents that are too large for the E-Filing system but could be filed through the E-Filing system if segmented into smaller files,

the filer must segment the document and file the segments separately.

- e. 10 C.F.R. § 2.303 (Docket).
- f. 10 C.F.R. § 2.304 (Formal requirements for documents; signatures; acceptance for filing).
- g. 10 C.F.R. § 2.305 (Service of documents, methods, proof): with the exception that when the Commission or the presiding officer has approved a method other than electronic service through the E-Filing system, service must be made either by fax, e-mail, hand delivery, or overnight mail in order to ensure expedited delivery. Use of overnight mail will only be allowed if fax, e-mail, or hand delivery is impractical.
- h. 10 C.F.R. § 2.306 (Computation of time): with the exception that subsections (b)(1) through (4), which allow additional time for mail delivery, do not apply. Because overnight delivery will result in only minimal delay, it is not necessary to extend the time for a response.
- i. 10 C.F.R. § 2.312 (Notice of hearing): the presiding officer will issue the notice of hearing promptly after it sets the time and place for the hearing.
- j. 10 C.F.R. § 2.313 (Designation of presiding officer, disqualification, unavailability, and substitution): with the exception that subsection (a) does not apply because this order designates the presiding officer.
- k. 10 C.F.R. § 2.314 (Appearance and practice before the Commission in adjudicatory proceedings): with the exception that,

to expedite the proceeding, the time to appeal a disciplinary sanction under subsection (c)(3) is modified to 10 days after issuance of the order imposing sanctions.

- l. 10 C.F.R. § 2.315 (Participation by a person not a party).
- m. 10 C.F.R. § 2.316 (Consolidation of parties).
- n. 10 C.F.R. § 2.317 (Separate hearings; consolidation of proceedings): with the exception that under subsection (b), the presiding officer may not consolidate two or more proceedings without the Commission's permission if there is a conflict in the Commission-imposed hearing procedures for those proceedings. In such cases, the presiding officer shall propose for Commission approval a reconciliation of the procedural differences that would allow for consolidation of the proceedings.
- o. 10 C.F.R. § 2.318 (Commencement and termination of jurisdiction of presiding officer).
- p. 10 C.F.R. § 2.319 (Power of the presiding officer): subsections (a), (c), (d), (e), (g), (h), (i), (j), (k), (l), (m), (o), (p), (q), (r), and (s) apply in their entirety. Subsection (b) applies with the clarification that the presiding officer may not broaden the scope of discovery or disclosures beyond what is set forth in this Order. Subsection (n) applies subject to the modifications made to 10 C.F.R. § 2.322 for this proceeding. Subsection (f) does not apply because depositions are not allowed in this proceeding.
- q. 10 C.F.R. § 2.320 (Default).
- r. 10 C.F.R. § 2.321 (Atomic Safety and Licensing Boards).

- s. 10 C.F.R. § 2.322 (Special assistants to the presiding officer): with the exception that subsections (a)(2) and (a)(4) do not apply. The use of a special master is not necessary with a licensing board or a single legal judge serving as the presiding officer. *{If the Commission chooses to serve as the presiding officer for the hearing, then § 2.322 applies with the following exceptions: subsection (a)(4) does not apply, the Commission need not consult with the Chief Administrative Judge, the Commission may appoint a special master without the consent of the parties, and the special master will have the authorities and responsibilities delegated to it notwithstanding the provisions in subsection (a)(2).}*
- t. 10 C.F.R. § 2.324 (Order of procedure).
- u. 10 C.F.R. § 2.325 (Burden of proof).
- v. 10 C.F.R. § 2.327 (Official recording; transcript).
- w. 10 C.F.R. § 2.328 (Hearings to be public).
- x. 10 C.F.R. § 2.329 (Prehearing conference).
- y. 10 C.F.R. § 2.330 (Stipulations).
- z. 10 C.F.R. § 2.331 (Oral argument before the presiding officer).
- aa. 10 C.F.R. § 2.332 (General case scheduling and management): with the exceptions that the presiding officer may not amend the schedule and procedures for this proceeding except as otherwise provided in this order, and that subsection (d) does not apply. As stated above, the presiding officer should issue an initial scheduling order within 3 days of the prehearing scheduling conference.

- bb. 10 C.F.R. § 2.333 (Authority of the presiding officer to regulate procedure in a hearing).
- cc. 10 C.F.R. § 2.334 (Implementing hearing schedule for proceeding): with the exception that, in the interest of avoiding unnecessary paperwork, subsection (c), which requires written notification to the Commission of certain delays in the hearing schedule, does not apply. The hearing procedures imposed in this order provide the presiding officer with some flexibility for certain intermediate hearing deadlines, with the exception that a showing of unavoidable and extreme circumstances is needed to delay a “strict deadline.”
- dd. 10 C.F.R. § 2.335 (Consideration of Commission rules in adjudications).
- ee. 10 C.F.R. § 2.337 (Evidence at a hearing).
- ff. 10 C.F.R. § 2.338 (Settlement of issues; alternative dispute resolution): with the clarification that alternative dispute resolution processes or settlement negotiations are to be conducted in parallel to the hearing process and may not serve to delay the proceeding. Additionally, consistent with subsection (b), alternative dispute resolution may be undertaken only upon a joint motion of all the parties.
- gg. 10 C.F.R. § 2.339 (Expedited decisionmaking procedure), with the exception that subsection (d) does not apply to an ITAAC hearing.
- hh. 10 C.F.R. § 2.343 (Oral argument).
- ii. 10 C.F.R. § 2.344 (Final decision).
- jj. 10 C.F.R. § 2.346 (Authority of the Secretary).

- kk. 10 C.F.R. § 2.347 (Ex parte communications).
- ll. 10 C.F.R. § 2.348 (Separation of functions).
- mm. 10 C.F.R. § 2.390 (Public inspections, exemptions, requests for withholding).
- nn. 10 C.F.R. § 2.1201 (Definitions).

IT IS SO ORDERED.

For the Commission

[Name]
Secretary of the Commission

Dated at Rockville, Maryland,
this __ day of [month], 20__.