

Draft Template D: Procedures for Resolving Claims of Incompleteness

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

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.¹ We have found that [the petitioner's] claims regarding ____ require additional information from [the licensee]. This order sets forth a schedule and procedures for addressing that/these issue(s).

I. BACKGROUND

To obtain a hearing on whether the facility as constructed complies, or upon completion will comply with the acceptance criteria in the combined license, the AEA requires that a petitioner “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 public health and safety.”² Our rules of practice implement this Atomic Energy Act requirement—the information provided in a contention “must be sufficient, and include supporting information showing, *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.”³ Without meeting this requirement, the contention cannot be admitted. However, our regulations provide a process for petitioners to claim that the licensee’s

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

² AEA § 189a.(1)(B)(ii), 42 U.S.C. § 2239(a)(1)(B)(ii).

³ 10 C.F.R. § 2.309(f)(1)(vii). See also 10 C.F.R. § 52.103(b).

10 C.F.R. § 52.99(c) report is incomplete and that this incompleteness prevents the petitioner from making the necessary *prima facie* showing. Specifically, the petitioner must identify the specific portion of the licensee's 10 C.F.R. § 52.99(c) report that is incomplete and explain why this deficiency prevents the petitioner from making the *prima facie* showing.⁴

II. DISCUSSION

[Address the petitioner's standing under 10 C.F.R. § 2.309(d).]

Here, [the petitioner] asserts that [one of/a number of] licensee notification(s) regarding the inspections, tests, and analyses and acceptance criteria (ITAAC) prescribed in the combined license fail(s) to contain sufficient information to enable [the petitioner] to make the required *prima facie* showing. Consequently, [the petitioner's] claims do not, at this time, satisfy the criteria for an admissible contention in this proceeding. We find, however, that [the petitioner] has demonstrated that [the licensee's ITAAC notification(s)] do(es) not contain the information required under 10 C.F.R. § 52.99(c), thereby preventing [the petitioner] from making a *prima facie* case for hearing.⁵

[Analysis of 10 C.F.R. § 2.309(f)(1)(vii) and claim of incompleteness.]

We therefore direct [the licensee] to provide the omitted information in accordance with the schedule set forth below.

III. SCHEDULE

[Describe information needed from the licensee.]

⁴ See 10 C.F.R. § 2.309(f)(1)(vii).

⁵ See *id.*

The licensee shall provide the identified information to the petitioner within [ten (10) days *or such other time as specified by the Commission*] of this order.

IV. ADDITIONAL PROCEDURES

If the petitioner wishes to file a contention based on the additional information, it will be subject to the requirements for motions for leave to file new or amended contentions after the original deadline set forth below. Other parties may file an answer to a new or amended contention in accordance with the procedures for new or amended contentions after the original deadline set forth below. No replies are permitted.

If the petitioner submits another claim of incompleteness notwithstanding the additional information provided by the licensee, it shall file its request with the Commission. Any additional claims of incompleteness are subject to the timeliness requirements for motions for leave to file claims of incompleteness after the original deadline, which are set forth below. Other parties may file an answer to an additional claim of incompleteness in accordance with the procedures for claims of incompleteness after the original deadline set forth below. No replies are permitted.

[Once finalized, cut and paste applicable general procedures from hearing procedures in Template B, including procedures for new or amended contentions and claims of incompleteness after the original deadline, but not including procedures related

to already admitted contentions and procedures related to interactions between the Commission and a licensing board (or single legal judge).]

IT IS SO ORDERED.

For the Commission

[Name]
Secretary of the Commission

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