

Enclosure 5

Final 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 cases where a particular procedure would only apply under certain conditions.
- 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

(Facility Name)

)
)
)
)
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)
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Docket No. 52-0XX-COL

CLI-XX-__

MEMORANDUM AND ORDER

Today we ruled on the request of _____ for a hearing concerning [licensee’s] intent to operate [facility name and unit number].¹ We concluded that the petitioner has satisfied the requirements for standing and has submitted valid claim(s) of incompleteness. Specifically, we have found that [the petitioner’s] claims regarding [_____] require additional information from [the licensee]. 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,

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

or upon completion will comply, with the acceptance criteria in the combined license, provided that we explain our reasoning for establishing those procedures.² 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.”³ 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.”⁴ Without meeting this requirement, the contention cannot be admitted. However, our regulations provide a process for petitioners to claim that the licensee’s 10 C.F.R. § 52.99(c) report is incomplete and that this incompleteness

² 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 public comments. See [*Federal Register* notice announcing final procedures and providing responses to comments]; [*Federal Register* notice soliciting comments on draft procedures]. [The notice in the Federal Register accompanying those rules general procedures provides a further explanation of their bases.](#) {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.}

³ AEA § 189a.(1)(B)(ii), 42 U.S.C. § 2239(a)(1)(B)(ii).

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

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.⁵

II. SCHEDULE

As discussed in CLI-XX-XX, we have concluded that the petitioner has submitted valid claim(s) of incompleteness. We therefore direct [the licensee] to provide the omitted information in accordance with the schedule set forth below.

[Describe the information needed from the licensee. The information to be provided by the licensee will be limited to information that is relevant to the specific portions of the 10 C.F.R. § 52.99(c) notification that were the subject of the valid claim of incompleteness. In addition, if the information to be provided is sensitive unclassified non-safeguards information (SUNSI) or Safeguards Information (SGI), then appropriate provisions for the protection of this information, such as protective orders or non-disclosure agreements, shall be included in this order. Procedures for access to SUNSI and SGI are in the "Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation" that was issued with the notice of intended operation. Further, the approved protective order templates for ITAAC hearings should serve as a basis for case-specific protective orders, as appropriate.]

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.

III. ADDITIONAL PROCEDURES

⁵ See 10 C.F.R. § 2.309(f)(1)(vii).

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.

The procedures set forth in this order are exclusive—in other words, no procedures other than those stated in this order apply to the proceeding on this/these claim(s) of incompleteness. 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, a licensing board or single legal judge may not alter these hearing procedures.⁶ As used in this order, the term “petitioner” refers to any person who (1) is contemplating the filing of a hearing request, (2) has filed a hearing request but is not admitted as a party to this proceeding, or (3) has had a hearing request granted.

⁶ 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). While the Commission is the presiding officer for the claim(s) of incompleteness and associated filings, a single legal judge may preside over SUNSI-SGI access disputes and a licensing board or single legal judge may rule on the admissibility of an amended contention.

[Additional procedures for claims of incompleteness will be inserted here. These procedures will primarily be taken from the “Order Imposing Additional Procedures for ITAAC Hearings Before a Commission Ruling on the Hearing Request” (Additional Procedures Order) in Template A, with changes to reflect the procedural posture for a valid claim of incompleteness.⁷ The Appendix to this Template specifically describes how the Additional Procedures Order in Template A applies to this Template.]

IT IS SO ORDERED.

For the Commission

[Name]
Secretary of the Commission

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

⁷ As explained in the Appendix to this Template, the procedures in Template B are used for one topic: hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness filed after the original deadline.

APPENDIX

Application to Template D of the “Order Imposing Additional Procedures for ITAAC Hearings Before a Commission Ruling on the Hearing Request” (Additional Procedures Order) in Template A

Template D Section	Template A APO Section	Application to Template D of the Additional Procedures Order in Template A
III.A	II.A	Section II.A (Briefing of Legal Issues in Filings) from the Additional Procedures Order in Template A <u>applies in its entirety</u> .
III.B	II.B	Section II.B (Hearing Requests and Answers to Hearing Requests) from the Additional Procedures Order in Template A <u>does not apply</u> because it concerns a hearing request submitted by the original deadline. <u>Section III.B in Template D will be reserved</u> .
III.C	II.C	Section II.C (General Motions) from the Additional Procedures Order in Template A <u>applies in its entirety</u> .
III.D	II.D	Section II.D (Motions for Extension of Time) from the Additional Procedures Order in Template A <u>applies in its entirety</u> .
III.E	II.E	Section II.E (Requests for Reconsideration and Motions for Clarification) from the Additional Procedures Order in Template A <u>applies with the following exception</u> : The first two sentences of Section II.E are replaced by the following text to reflect the procedural posture for claims of incompleteness: “Motions and petitions for reconsideration are not allowed in this proceeding on the valid claim(s) of incompleteness. This is because reconsideration is permitted in an ITAAC hearing only for a presiding officer’s initial decision and Commission decisions on appeal of a presiding officer’s initial decision.”
III.F	II.F	Section II.F (Presiding Officer Notifications) from the Additional Procedures Order in Template A <u>applies in its entirety</u> .
III.G	II.G	Section II.G (Hearing Requests, Intervention Petitions, and Motions for Leave to File New or Amended Contentions or Claims of Incompleteness Filed After the Original Deadline) from the Additional Procedures Order in Template A <u>does not apply</u> because its wording does not reflect that a decision on the hearing request has been issued. Instead, Section III.G (Hearing Requests,

		Intervention Petitions, and Motions for Leave to File New or Amended Contentions or Claims of Incompleteness Filed After the Original Deadline) <u>from Template B will be used.</u>
III.H	II.H	Section II.H (Reopening the Record) from the Additional Procedures Order in Template A <u>applies in its entirety.</u>
III.I	II.I	<p>Section II.I (Commission Review of Presiding Officer Decisions) from the Additional Procedures Order in Template A <u>applies with the following exception:</u> The text in Section II.I.1 is replaced by the following language:</p> <p>Provisions are being included for Commission review of presiding officer decisions because a single legal judge may preside over SUNSI-SGI access disputes and an Atomic Safety and Licensing Board or a single legal judge may rule on the admissibility of an amended contention. 10 C.F.R. § 2.311 does not apply to this proceeding, but is replaced by the provisions in Section III.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 III.I.2 and III.I.3 of this Order.</p>
III.J	II.J	Section II.J (Stays of Decisions or Actions) from the Additional Procedures Order in Template A <u>applies in its entirety.</u>
III.K	II.K	Section II.K (Additional Provisions) from the Additional Procedures Order in Template A <u>applies in its entirety.</u>