

PROTOCOL FOR THE CONDUCT OF JOINT HEARINGS
BEFORE THE
UNITED STATES NUCLEAR REGULATORY COMMISSION
AND THE
NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

NEW HAVEN 1 AND 2



I. STATEMENT OF PURPOSES

New York State Electric & Gas Corporation and Long Island Lighting Company have applied to the United States Nuclear Regulatory Commission (NRC) for a permit to construct the New Haven Nuclear Station proposed to be located in Oswego County, New York, and applied to the New York State Board on Electric Generation Siting and the Environment (Siting Board) for a Certificate of Environmental Compatibility and Public Need to construct, operate, and maintain the facility. A joint hearing before the NRC and the Siting Board on matters within their common jurisdiction (the National Environmental Policy Act of 1969 and Article VIII of the New York State Public Service Law, respectively) would avoid unnecessary duplication, thereby expediting the decision-making process and reducing the time, effort, and costs which would otherwise be incurred by the parties were separate proceedings held. In addition, the holding of joint hearings will materially assist both agencies in compiling a full and complete evidentiary record on matters within their common jurisdiction.

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II. COMPOSITION OF THE JOINT HEARING BODIES

The joint hearings shall, for the NRC, be held before an Atomic Safety and Licensing Board (ASLB) and, for the Siting Board, a hearing body composed of a Presiding Examiner appointed by the New York State Department of Public Service (PSC) and an Associate Examiner appointed by the New York State Department of Environmental Conservation (DEC).

III. LOCATION OF JOINT HEARINGS

The principle location for the joint hearings shall be in the region of the New Haven site. Hearings may be held in other locations as appear suitable under the circumstances, as determined by the joint hearing bodies.

IV. PROCEDURES FOR THE JOINT HEARING

A. Commonality of Evidentiary Record. One evidentiary record will be developed in the joint hearings. In order to assist both agencies in compiling a full and complete evidentiary record, any evidence or offer of proof submitted to one hearing body shall be deemed submitted to both hearing bodies and shall be compiled on the joint record. At the conclusion of the joint hearing, each hearing body shall afford the parties before it an opportunity to move to strike any evidence previously received on the ground that the evidence is beyond the list of issues specified by that hearing body as controverted issues.

B. Status of Counsel for Agency Staffs. For the purposes of preparing for and holding the joint hearing, Staff Counsel for the New York State Department of Public Service (DPS) and Counsel for the DEC Staff shall be accorded all the rights and remedies of an interested State under Section 2.715(c) of the NRC Rules of Practice [10 CFR § 2.715(c)]. And for the purposes of preparing for and holding the joint hearing, Counsel for the NRC staff shall be accorded all the rights and remedies of a party under Part 70 of the DPS Rules of Procedure [16 NYCRR 70.1 et seq.]

C. Status of Parties. Each agency shall rule on petitions for party status and intervention according to its own rules and regulations. Persons who have been granted party or intervenor status under either agency's rules of practice shall not be deemed to be a party in the other agency's proceedings, but shall be permitted to participate in the joint hearing. Evidence offered by a person who is not a party in both agency's proceedings may be subject to an objection in the proceeding to which he is not admitted as provided in Section IV.E, infra.

D. Motions. Presentation, disposition, form, content, and answers to a motion made before one hearing body, but not the other, shall be governed by that hearing body's rules of practice. Unless made orally on the record during the joint hearing, motions made before both hearing bodies shall be in writing, shall state with particularity the grounds and relief sought, and shall be accompanied by such supporting material as may be suitable. Within 10 business days

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(Saturdays, Sundays and holidays are not counted as business days) after service of a written motion before both hearing bodies, a party may file an answer in support of, or in opposition to, the motion, accompanied by supporting material. A nonparty shall not be permitted to file motions or answers in the proceeding to which he is not admitted.

E. Rulings. The hearing bodies shall each make necessary rulings on procedural questions in accordance with the rules and regulations governing the respective agencies. Any objection to evidentiary offerings and motions shall be heard by both bodies and separate rulings by each body shall be made thereon. Where both bodies rule that an evidentiary offering is objectionable, the offering shall not be received in evidence. Where only one body rules an evidentiary offering objectionable, the offering shall be received in evidence only by the other body. In such an instance, the ruling that the evidence is objectionable shall be entered into the transcript of the joint hearing, but the evidence so entered shall not be part of the evidentiary record of the body ruling that it is objectionable. It shall be a grounds for objection before a hearing body that evidence being submitted before that hearing body is beyond the list of issues specified by that body as controverted issues, or that it is immaterial, unreliable or unduly repetitious. It shall be grounds for objection before

the ASLB that evidence sought to be entered before it is being submitted by a non-party.

F. Consolidation. In view of the provisions of Section 145(1) of Article VIII of the New York Public Service Law, which prohibits the Presiding Examiner from consolidating the representation of governmental bodies or agencies, no consolidation of governmental bodies or agencies which are parties to the joint proceeding shall be required. On motion or on its own initiative, the joint hearing bodies may order any nongovernment parties who have substantially the same interest that may be affected by the proceeding and who raise substantially the same questions to consolidate their presentation of evidence, cross-examination, briefs: proposed findings of fact, and conclusions of law and argument. However, they may not order any consolidation that would prejudice the rights of any party. A consolidation under this section may be for all purposes of the proceeding, all of the issues of the proceeding, or with respect to any one or more issues thereof.

G. Presiding at Alternate Sessions. For the sole purpose of maintaining order, the Chairperson of the ASLB and the Presiding Examiner shall assume the responsibility of chairperson and preside over the joint hearing at alternate sessions, unless otherwise agreed upon by the Chairperson and the Presiding Examiner.

V. PROCEDURES FOR IDENTIFYING CONTENTIONS
AND CONTESTED ISSUES

- A. NRC Proceeding. The procedure for the identification of contentions in the NRC proceeding shall be governed by the NRC Rules of Practice.
- B. Article VIII Proceeding. Approximately one month after NRC issuance of the Draft Environmental Statement, on a specific date set by the Presiding Examiner, the parties to the Article VIII proceeding, other than the applicants, shall be required to exchange statements of specific issues believed to be contested. Through at least one informal meeting with the applicants, parties shall attempt to focus and narrow the issues in contention. In writing prior to the first informal meeting or orally at the first informal meeting, the applicants shall respond to the issues presented by the parties. DPS staff shall accept responsibility to make arrangements for and to conduct the informal meeting or meetings. The results of the informal meeting or meetings shall be presented to the Presiding Examiner at a prehearing conference. The Presiding Examiner shall attempt to narrow the contested issues prior to the evidentiary hearings and, after consultation with the Associate Examiner, shall issue an order listing those issues which may be litigated by parties in the Article VIII proceeding. Testimony or cross-examination may be excluded by the Presiding Examiner for purposes of the Article VIII proceeding on the ground that it is beyond the list of contested issues.

However, in no instance shall DEC be precluded from fulfilling its responsibilities, as set forth in § 144(1)(b) of the Public Service Law, to present expert testimony and information concerning the potential environmental impact of the proposed facility and alternate facility or energy source on the environment, and whether and how such facility would comply with applicable state and municipal environmental protection laws, standards, rules and regulations. Once determined by the Presiding Examiner, the list of contested issues may be modified by the Presiding Examiner, after consultation with the Associate Examiner, only for good cause shown.

VI. PREHEARING CONFERENCES

Prior to the evidentiary hearing, the hearing bodies shall schedule and hold one or more joint prehearing conferences for the following purposes:

- (1) determining those matters which are properly the subject of the joint hearing;
- (2) formalizing discovery rules and establishing a schedule for discovery;
- (3) obtaining stipulations and obtaining admissions of fact and of the contents and authenticity of documents;

- (4) considering, to the extent feasible, the identity of witnesses, and other measures to expedite the presentation of evidence;
- (5) setting of pretrial and hearing schedules, including the order in which subjects shall be heard;
- (6) determining the time and procedures for site visits by the hearing bodies; and
- (7) considering any other measure which may expedite the orderly conduct and disposition of the joint hearing.

VII. HEARINGS FOR LIMITED APPEARANCES AND PUBLIC STATEMENTS

The hearing bodies shall consider the feasibility of holding a joint hearing in the vicinity of the New Haven site for the purposes of accepting limited appearances pursuant to Section 2.715 of the NRC Rules of Practice [10 CFR § 2.715] and for taking, as is the practice in Article VIII proceedings, oral or written statements from members of the public.

VIII. WRITTEN TESTIMONY

A. Use of Written Testimony. Unless otherwise allowed by the concurrence of the hearing bodies upon a showing of good cause, direct and rebuttal testimony shall be submitted in written form. The proposed written testimony of an expert witness shall contain a statement of the witness' professional qualifications.

B. Service of Written Testimony. On a schedule to be set jointly by the hearing bodies, each party shall serve copies of its proposed written testimony on the hearing bodies and on every other party to the NRC proceeding and to the Article VIII proceeding.

C. Form of Written Testimony. Written testimony shall be typewritten and double spaced on paper measuring eight and one-half inches in width and 11 inches in length. The top, bottom and left margins should be at least one and one-half inches. The name of the witness should be typed at the top center of each page one inch from the edge. The number of each page should be typed at the bottom center one inch from the edge. Each page should contain line numbers on the left side of the page.

IX. SERVICE OF DOCUMENTS

Service may be made by personal delivery or by first class, certified, or registered mail. Service is complete upon personal delivery or upon deposit in the United States mail, postage paid. When service is accomplished by mail, five days shall be added to the prescribed period for responding to the document.

X. CONDUCT OF THE EVIDENTIARY HEARING

- A. Commencement. The evidentiary hearing shall not begin until after NRC Staff issues the Final Environmental Statement. At the earliest practicable date after issuance of the Final Environmental Statement, the evidentiary hearing shall begin on a schedule jointly agreed upon by the hearing bodies. Except upon concurrence of the hearing bodies for good cause shown, no evidentiary hearing on a subject shall be held for a period of 15 days after testimony on that subject is served.
- B. Conduct of Evidentiary Hearing. The evidentiary hearing shall proceed on a contention/issue basis--either a designated contention (NRC) or a contested issue (Article VIII). After an adequate period for full discovery of the applicants' direct case on a contention/issue, proper parties shall file their direct cases on that contention/issue. After a period, which may include an opportunity for discovery, the applicants may file rebuttal testimony on that contention/issue. Then, and for the first time, an evidentiary hearing shall begin for examination of all witnesses presenting testimony and exhibits on that contention/issue. It is anticipated that the schedule for filing evidence on contention/issues will overlap. The hearing may begin before the evidence on some contention/issues is presented.

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C. Order for Presenting Testimony and Conducting Cross-Examination.

Parties shall present testimony and conduct cross-examination on contention/issues in the following order: applicants, DPS Staff, DEC Staff, other parties and intervenors, and NRC Staff. If consistent with the orderly and expeditious conduct of the joint hearing, this order may be changed by concurrence of the ASLB and the Presiding Examiner to accommodate the convenience of the parties.

D. Procedure After Conclusion of Joint Hearing. After the conclusion of the joint hearing, each hearing body shall set a schedule for the submission of briefs, findings, conclusions, and recommendations as may be required under its own rules of practice. Each agency shall separately issue such decisions, certificates, licenses, or permits as may be called for under its governing laws, rules and regulations.

XI. PARTICIPATION

A party to the Article VIII proceeding may participate pro se or by an attorney or other representative designated by the party. However, a party to the NRC proceeding may be represented only in accordance with 10 CFR § 2.713(a). A party is responsible for any examination or cross-examination conducted on its behalf.

XII. STANDARD OF CONDUCT

Any individual participating in the joint hearing shall conform to the standards of conduct and responsibility for attorneys before courts of the United States or of the State of New York. Failure of an individual to conform to these standards will be ground for refusing to permit that individual's continued participation in the joint hearing.

XIII. COOPERATION AMONG AGENCY STAFFS

The staffs of the NRC, DPS, and DEC shall cooperate to avoid unnecessary duplication in discharging their respective responsibilities in the joint hearing. The staffs shall consult each other in conducting their analyses and in preparing for, and participating in, the joint hearing. To the maximum extent possible, the staffs should avoid presenting repetitive evidence and may, if at least two of the staffs are in agreement on the merits of an issue, present only one set of testimony or one set of witnesses on that issue on behalf of the agreeing staffs.

XIV. REVISION, SUSPENSION AND TERMINATION

The Chairperson of the ASLB and, after consultation with the Associate Examiner, the Presiding Examiner of the Siting Board may jointly amend or waive any provision of this protocol at

any time. The Nuclear Regulatory Commission or the Chairman of the Siting Board may suspend operation of or terminate this protocol at any time. In that event, the other agency and the parties shall be provided 10 days notice before such termination or suspension.