

July 22, 1999

MEMORANDUM TO: Karen D. Cyr  
General Counsel

FROM: Annette Vietti-Cook, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - SECY-99-006 - RE-EXAMINATION  
OF THE NRC HEARING PROCESS

The Commission has approved the two-track solution outlined in Option 4 which includes rulemaking while concurrently pursuing legislation to confirm that NRC has the discretion to choose the hearing procedures it desires in carrying out its responsibilities. Additionally, the Commission has approved retaining the use of the formal hearing process for enforcement cases. The Commission has directed careful case management and will continue close Commission oversight and monitoring of cases via the Office of Commission Appellate Adjudication. OGC should prepare draft legislation that would give the Commission the same flexibility the Commission has been given by section 189a(1)(B)(iv) of the AEA for hearings on combined licenses. The legislative package the Commission has already sent to the Congress should be amended accordingly.

(OGC)

(SECY Suspense:

8/1/99)

The rulemaking should outline the NRC's discretion and flexibility to determine the type of proceeding for hearings which would require at a minimum the opportunity for informal hearings, but which would contemplate the use of more formal procedures where appropriate. The rulemaking should provide an approach that would modify at least 10 CFR Part 2, Subparts G, L, and J so that all hearing requests (except enforcement cases but including reactor and materials licensing matters) will follow a similar path. The rulemaking should also provide for comment on a 'Fast Track Option' (as outlined by OGC in Attachment 4, page 8). The rulemaking should provide specific techniques that would be available if an informal process was determined to be appropriate and should describe the agency rationale for the type of proceeding selected. The rulemaking should include evaluation of procedures that would limit or discipline the use of motions, formal discovery, and cross-examination by the parties. For example, the Commission could consider adoption of a requirement, along the lines of Rule 26(a) of the Federal Rules of Civil Procedure, that would require parties to make disclosures -- without written demand -- of knowledgeable individuals, relevant documents, and expert testimony. The rulemaking should include codification of a standard for discretionary intervention. The rulemaking should utilize and codify, as appropriate, the Commission's previous guidance in Statements of Policy on Conduct of Adjudicatory Proceedings. The staff should consider use of an enhanced participatory process for facilitating the exchange of views from stakeholders, such as facilitated meeting(s) and/or an advanced notice of proposed rulemaking where stakeholders could present their views on experience with Subparts G and L.

(OGC)

(SECY Suspense: Proposed Rule:  
12/15/99)

The statement of considerations for the proposed rules, and the case we make in pursuit of legislation on hearings, should make clear that we are not trying to push the public away but instead are actively seeking to engage the public in what we hope will be more timely, useful, and satisfying ways. In proposing legislation and changing Part 2, the agency is not out simply to shorten hearings and make them less formal. Instead, we are moving away from imposing the trappings of trials on citizens who seek to participate in licensing actions. Many public interest groups, even some reasonably well-funded ones, simply do not have the time and money for NRC formal adjudication. The cases we make for legislation and rulemaking should also say that we are increasing our efforts to engage with the public more generally. Hoping to generate useful discussion, the staff and the Commission are more often engaging in early, frequent, and useful interactions with public interest groups.

The staff should include the questions attached in the Statement of Considerations to assure identification for public comment.

Attachment:  
As stated

cc: Chairman Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
EDO  
CIO  
CFO  
OCA  
OIG  
OPA  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR  
DCS

## ATTACHMENT

### QUESTIONS FOR THE STATEMENT OF CONSIDERATIONS FOR PUBLIC COMMENT

Tracks -- How many proceeding tracks should there be? We understand that there will need to be at least two tracks: a formal track (for enforcement proceedings and maybe some others), and an informal track. There could be more than one informal track (for example, there could be a highly expedited informal track and a general informal track). Rules would need to be prescribed for each of these tracks (of course, some rules could apply equally to all tracks). Assuming that there is more than one track, who will decide which track is appropriate? Should there be criteria for selection of the appropriate track for a proceeding? Should parties be permitted to choose the track they want to follow?

Presiding Officer -- Should there be criteria in the rule for determining whether a proceeding should be held before an administrative judge or the Commission? If yes, what should those criteria be?

Discovery -- Should discovery be eliminated in adjudicatory proceedings other than enforcement proceedings? Should it be limited to requests from the Presiding Officer? Should the parties be required to provide each other, at the outset of a proceeding, with all documents in their possession that are relevant to the proceeding, without going through a discovery process?

Witnesses -- Should parties be permitted to present witnesses who testify orally? Or should all witness testimony be in the form of written submissions? Who should be allowed to elicit testimony from a party's witnesses (e.g., the presenting party, or only the presiding officer)?

Cross examination -- Should parties be permitted to cross examine witnesses orally? Should cross examination be limited to questions from the Presiding Officer?

Oral statements -- Should oral statements by parties be limited to time-circumscribed arguments made by parties or their representative? Should proceedings be permitted to take place on paper filings alone?

Time limitations -- should firm time schedules for various aspects of proceedings be laid down? For example, if discovery is allowed, it could be required to be completed within a relatively short period of time; an initial decision could be required within a certain number of days after the parties have presented their final arguments?

Alternative Dispute Resolution - Should parties be required to engage in alternative dispute resolution? When would be the best point in the proceeding to engage in alternative dispute resolution?