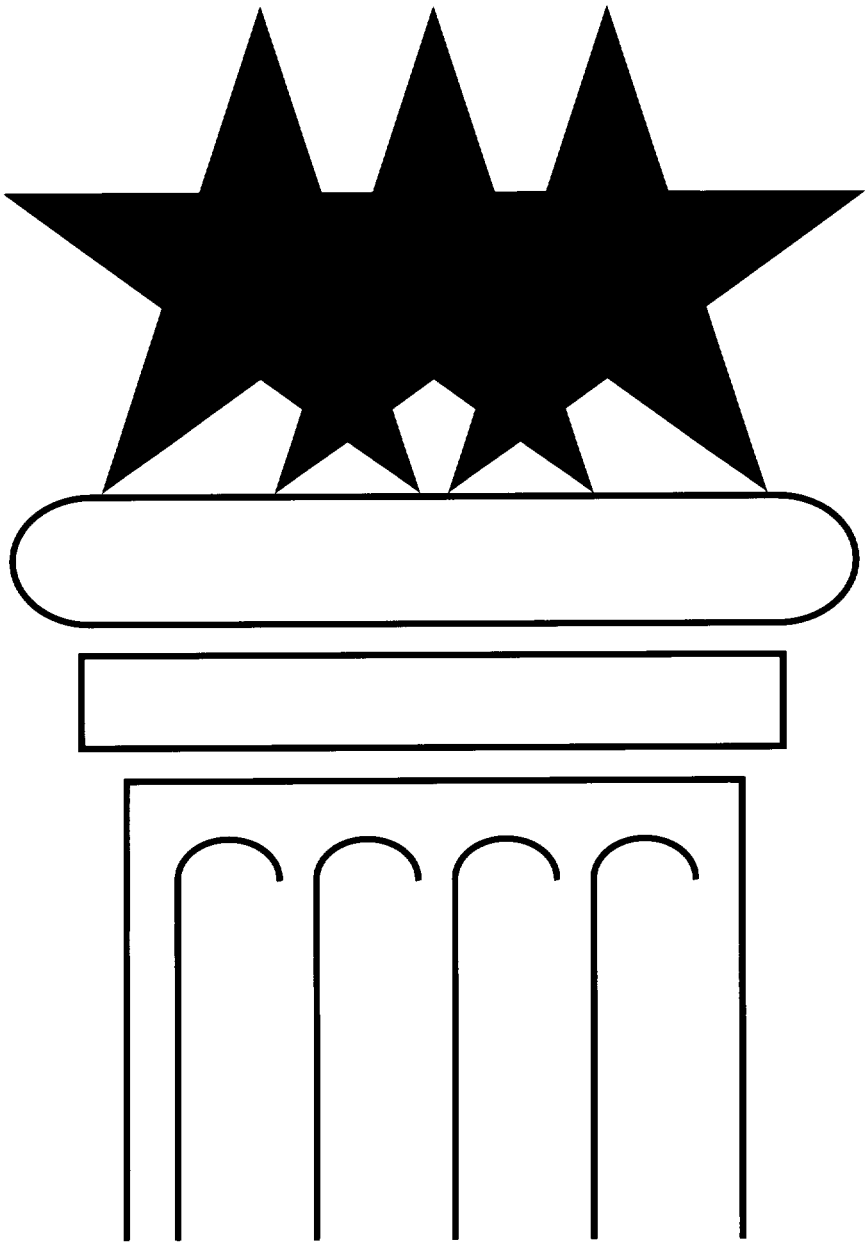
THE ATOMIC SAFETY AND LICENSING BOARD PANEL



THE ATOMIC SAFETY AND LICENSING BOARD PANEL

Through the Atomic Energy Act, Congress made it possible for the public to get a full and fair hearing on civilian nuclear matters. Individuals who are directly affected by any licensing action involving a facility producing or utilizing nuclear materials may participate in a hearing before independent judges of the Atomic Safety and Licensing Board Panel (ASLBP or Panel).

Hearings often involve difficult, interdisciplinary questions at the cutting edge of science and technology. In addition, NRC hearings air local concerns about the consequences of severe accidents and continue the national debate over the role nuclear power should play in meeting the nation's energy needs.

Contested hearings at the NRC are conducted either by three judges or by a single administrative judge drawn from the Panel. Hearings before these judges are among the most complex, lengthy, and controversial administrative proceedings conducted by the Federal government.

The Panel considers issues arising out of the operation of the nation's more than 100 nuclear power plants and out of programs related to approximately 5,000 nuclear materials licensees. Hearings have shifted away from the large nuclear power plant operating licenses and construction permits and instead focus on license extensions, site decontamination, enforcement actions, and reactor and materials license amendments.

Future proceedings are also likely to involve plant life extensions, licensing of a high-level radioactive waste repository, and decommissioning activities. The proceeding to license a high-level waste repository at Yucca Mountain, Nevada, in particular, will involve novel and complex scientific issues.

Types of Hearings

The NRC's regulations provide the opportunity for numerous hearings that include the following types:

ANTITRUST PROCEEDINGS. The licensing of a nuclear reactor may be contested on antitrust grounds if its operation is inconsistent with the antitrust laws.

COMMISSION-ORDERED PROCEEDINGS. Hearings can be conducted for any nuclear-related matter that the NRC Commission directs. For example, although hearings are not required for rulemaking, the NRC's regulations allow for a hearing opportunity to contest proposed rules that would certify designs for new reactors.

ENFORCEMENT PROCEEDINGS. Hearings are available to individuals, employees, licensees, contractors, subcontractors, and vendors to contest penalties such as monetary fines, facility shutdown, or license revocation for infractions of NRC regulations.

LICENSE AMENDMENTS. Affected parties may challenge proposed license amendments that seek to change the operating functions or the physical configuration of nuclear reactors. If public health and safety warrants, hearings will be required before the license amendment is authorized.

MATERIALS LICENSES. Hearings may be conducted to contest NRC actions licensing the commercial use of nuclear materials. These licenses involve manufacturing, treatment, disposal, or storage of radioactive materials and their commercial use in fields such as nuclear medicine and radiography.

PERSONNEL MATTERS. Hearings are also available for employee grievances or agency personnel actions, differing professional opinions, and appeals from sanctions for fraudulent claims.

REACTOR LICENSING. The Atomic Energy Act requires that a hearing be held on every application for a license to build and operate a nuclear facility that produces electric power. The combined construction permit and operating license hearing provides an opportunity for affected individuals and organizations to raise health, safety, and antitrust issues. Separate hearings may be held on applications for construction permits or for operating licenses for a nuclear power plant or related facility if a combined license is not requested.

How Does the Public Participate?

The public can participate in NRC hearings by

1 submitting written statements for consideration;
2 making oral presentations at hearings; or
3 becoming "intervenors" in hearings with full participatory rights as parties. Parties to NRC hearings may appeal adverse Commission decisions to the Federal Circuit Courts of Appeals and ultimately to the Supreme Court of the United States.

Formality of Hearings

Hearings may be either formal or informal. The Panel's formal hearing procedures are spelled out in the Administrative Procedure Act and the Commission's own rules of practice. Formal proceedings employ the traditional procedures used in non-jury Federal court cases, including pretrial discovery between the parties and formal trial procedures at the evidentiary hearing. Formal procedures are used in reactor licensing cases and in enforcement proceedings brought by the agency against individuals and licensees.

Informal hearing procedures are generally followed in matters affecting one of the NRC's materials licensees. While the deliberative process for judges remains the same under either type of hearing, informal hearings grant the parties significantly fewer procedural rights for developing the record upon which decisions must be based. The informal hearings utilize written submittals by the parties with a limited opportunity for oral presentations. Discovery by the parties is not permitted.

High-Level Waste

The Panel plans to make the initial decision in a formal hearing on whether the Department of Energy's (DOE) high-level waste repository at Yucca Mountain, Nevada, satisfies applicable safety and environmental requirements before granting DOE a license to operate it.

The Panel is also responsible for developing and operating the Licensing Support Network (LSN), an Internet-based electronic discovery document management system for the repository licensing proceeding. Within the next few years, the Panel will adjudicate any disputes in connection with the millions of pages of documents that will be available electronically to all parties and participants prior to DOE's repository license application.

Other Panel Responsibilities

ADVISORY OPINIONS. The Panel monitors all proposed rules, final rules, and legislation affecting the NRC's hearing process and advises the Commission when potential problems exist. The Panel may comment on rules and regulations proposed by the NRC's Office of the General Counsel.

ELECTRONIC HEARING DOCKET. The Panel has been working with other NRC offices to consolidate and computerize the NRC's adjudicatory dockets and to develop methods of electronic document filing in administrative hearings.

ALTERNATIVE DISPUTE RESOLUTION. Panel members are trained in Alternative Dispute Resolution techniques. This resource is available to the agency for mediation and facilitation services.

MANAGING COURT REPORTING SERVICES. The Panel manages NRC court reporting services for itself and the rest of NRC, covering proceedings, meetings, depositions, public hearings, oral arguments, and investigative interviews held in the United States, Canada, and Mexico.

Litigation Technology

TWO WHITE FLINT NORTH HEARING ROOM

In July 1994, the NRC opened a new hearing room, accommodating 60 people, in its Two White Flint North building in Rockville, Maryland. The "well of the court" has a circular design to afford all hearing participants an unobstructed view.

INTEGRATED TECHNOLOGIES: THE PAPERLESS COURTROOM

To handle large, complex proceedings efficiently and effectively, the Panel utilizes audio, video, and computer technology, including a local area network and a speakerphone system that permits conference calls between the Panel and parties to the proceeding at distant locations. Participants can also locate and view electronic text and images of exhibits and record materials, perform searches on the Internet, and access outside library materials. Video capabilities include a voice-activated video tape court reporting system with cameras and monitors and a videoconferencing system to allow parties and witnesses to participate from multiple remote locations. A video record is available immediately after the day's testimony.

ELECTRONIC FILING

The Panel is testing a system for electronic filing in administrative proceedings. The system will make it possible for the parties' computers to send documents instantly to each other and the NRC regardless of their software and hardware configurations. This system could save considerable time and resources and may establish a standard for all government agencies.

Research

Judges can access the full text and images of documents from their computers while simultaneously conducting legal research through external systems such as LEXIS and WESTLAW. In addition, the shared local area network allows members of the Panel to access documents and exchange information with each other.

All significant Panel decisions are published in the "NRC Issuances" law books, along with other Commission decisions dating back to 1956, and are available in the NRC's Public Document Room, at 11555 Rockville Pike, Rockville, MD, telephone 800-397-4209, e-mail: pdr@nrc.gov

Recent decisions can be found on NRC's Agencywide Documents Access and Management System (ADAMS), with access to the public through the NRC's Internet web site Public Electronic Reading Room link at http://www.nrc.gov/NRC/ADAMS/index.html

Panel Members

The Panel's judges include lawyers, medical doctors, physicists, engineers, and environmental scientists. They are employees of the NRC whose decisions are subject to Commission review, but the Administrative Procedure Act grants them independence from the Commission. Thus, the ex parte and separation of functions rules dictate that the Panel and its members remain "at arms length" to avoid the appearance of a conflict of interest.

For a current list of judges, see the Panel's home page at http://www.nrc.gov/NRC/ASLBP/homepage.html or call 301-415-7550.

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