

The NRC Licensing Process:

Judging the Safety of a Proposed Repository



C. William Reamer, Director

Division of High-Level Waste Repository Safety

Workshop for Affected Units of Local Government

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Enclosure 3

Purpose

- Respond to request by Eureka County on behalf of Affected Units of Local Government
- Describe hearing process NRC will use if we receive an application for a repository license
- Explain options for participation by Affected Units of Local Governments

NRC's Role At Yucca Mountain

- Independent regulator
- Primary mission is to protect public health and safety and the environment
- Must decide whether to authorize DOE to construct the proposed repository
- If authorization is granted, must assure DOE complies with the rules

NRC Will Do So By...

- **Reviewing all information objectively**
- **Making open decisions based on the facts**
- **Maintaining an open, public process**

Who Makes The Decisions At NRC?

- Five NRC Commissioners
 - Appointed by the President
 - At most 3 of any one political party
 - 5-year term of service
 - Chairman designated by the President
 - Accomplished scientists, engineers, attorneys

What Is The Role Of NRC's Professional Staff?

- Carry out Commission policies
- Recommend health & safety regulations
- Evaluate license applications
- Advise Commission on safety and environmental matters
- Communicate with the public

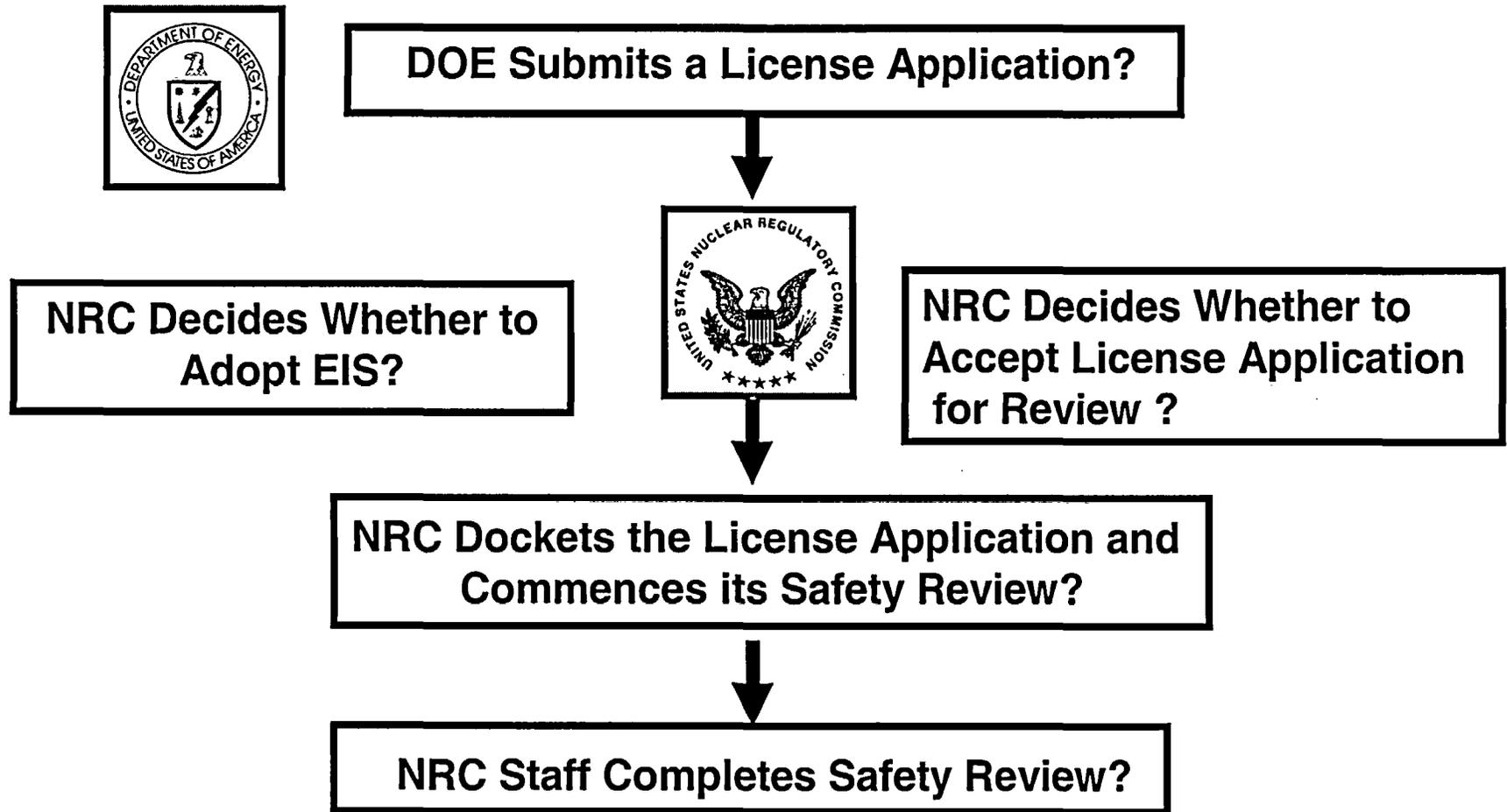
What Is The Role Of The Atomic Safety and Licensing Board Panel?

- Independently conducts all licensing and other hearings for the Commission usually with three-judge Hearing Boards
- Panel also manages activities of the Licensing Support Network

NRC Must Decide Whether To Allow DOE To Construct A Repository At Yucca Mountain

- If DOE submits a license application, Congress directs NRC to decide within three years

What Has To Happen Before NRC Would Hold A Hearing On Yucca Mountain?



NRC Staff Acceptance Review

- **Verify that application**
 - Contains all required information
 - Documents DOE's safety claims
 - Complies with document access requirements
- **Not a detailed technical review**
- **If accepted, 3 year clock starts**

NRC Staff Environmental Review

- License Application must include DOE's Environmental Impact Statement
- Law requires NRC to adopt DOE's final EIS "to the extent practicable"
- NRC must determine extent to which it can adopt DOE's EIS

NRC Staff Safety Review

- Review License Application
- Request more information, if needed
- Conduct independent confirmatory analyses
- Document results in a Safety Evaluation Report



Possible Outcomes Of NRC's Licensing Process:

- Deny the Application
- Grant a License with Conditions
- Grant a License

Summary

- Any NRC decision on a potential license application for a repository will:
 - be based on NRC staff's comprehensive, independent safety review
 - Include a full and fair public hearing that follows formal, well-established rules to ensure an open, objective decision

The NRC HLW Hearing Process



**Marian Zabler
Office of General Counsel**

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HLW Hearing Process: 10 CFR Part 2

- Formal, trial-type process**
- Atomic Safety and Licensing Board presides**
- Participants include:**
 - NRC Staff**
 - Department of Energy (DOE)**
 - Intervenors (e.g., host state, affected units of local government, Indian tribes, individuals, organizations)**
 - “Interested” state and local governments, and Indian tribes**

Participation

- Affected Units of Local Government can participate in the NRC Hearing in either of two ways:
 - As an intervenor
 - As an interested governmental participant

Intervention (Party Status)

- Anyone whose interest may be affected and who wants to be a party must file a petition for leave to intervene that describes:
 - How their interest may be affected by the outcome of the proceeding, (i.e., standing)
 - Affected Units of Local Government do not have to demonstrate standing
 - One or more contentions (statements of contested law or fact)

Contentions (Disputed Issues)

- Legal or factual issues (e.g., safety and/or environmental disputes) that a petitioner wants decided--They must
 - Be specific
 - Be supported by documents or expert opinion
 - Demonstrate a dispute with DOE on a material factual or legal issue regarding proposed action

- Usually allege applicant failed to satisfy some legal or regulatory requirement

Interested Governmental Participant

- Any person admitted under 10 CFR Part 2.315(c) of NRC's regulations

- Can be
 - An Interested State Government
 - A local Governmental Body
 - An Affected Indian Tribe

- Not otherwise admitted as a party

Interested Governmental Participant (cont.)

- Files a request to participate
- Designates a single representative for the hearing
- Does not have to file contentions
- Before the hearing, must identify admitted contentions on which it will participate

What Does Participation Entail?

- Both Parties and Interested Governmental Participants can:
 - Engage in discovery
 - Introduce evidence
 - Interrogate witnesses
 - File proposed findings
 - Appeal to the Commission

Party or Governmental Participant?

■ Party

- Has at least one contention admitted

- Admissible contentions will be subject to litigation

■ Governmental Participant

- Need not take a position on an issue

- Relies on other parties to raise contentions

Pre-Hearing Conferences

- Parties, interested governmental participants, and petitioners for intervention meet to discuss:
 - Identity of participants in the proceeding
 - Proposed contentions
 - Discovery schedule

Discovery

- Allows parties to learn basis for each party's case using:
 - LSN (electronic access to documents)
 - Interrogatories (written questions)
 - Depositions (questions answered under oath before a court reporter)
 - Requests for admissions

Evidentiary Hearing

- ASLB presides over conduct of hearing
- Oral and documentary evidence
- Witnesses cross-examined

Initial Decision

- Written decision on matters in controversy in the proceeding

- Findings of fact and conclusions of law based on record of the proceeding
 - Exhibits
 - Transcript of testimony
 - Rulings on legal issues

Appeal to, or Review by, the Commission

- Appeals from pre-license application order, prehearing conference order, summary disposition order, or order regarding amended contentions must be filed within 10 days
- ASLB may refer rulings to Commission; parties may request certification of a question for Commission review

Appeals (cont.)

- Notices of appeal from an Initial or Partial Initial Decision must be filed within 10 days – detailed brief due 30 days later
- Other parties have a right to respond

Results of Commission Review

- The Commission may
 - Affirm decision (allow it to become final agency action, reviewable in Federal court)
 - Modify decision
 - Remand decision - send it back to ASLB with guidance about issues or testimony
 - Reverse decision

Timeline, If Application Is Received

- Possible docketing of application; Notice of Hearing; and Environmental Impact Statement Adoption Determination in the *Federal Register* (FR) → within 90 days after receipt of Application
- Petitions for leave to Intervene must be filed → within 30 days after FR notice
- Prehearing Conference → within 70 days after FR notice

Timeline, if Application Is Received (cont.)

- Prehearing Conference order on intervention
 - Discovery schedule set
- within 100 days after FR notice

- Appeals
- within 110 days after FR notice

- NRC Staff completes Safety Evaluation Report
- within 18 months after FR notice

Timeline, If... (cont.)

- Evidentiary hearing begins → within 24 months after FR notice
- Initial Decision → within 32 months after notice
- Commission decision → about 3 years after FR notice

Summary

- Any NRC decision on a potential license application for a repository will be based on a full and fair public hearing completed within 3 - 4 years
- Hearing would follow formal, well-established rules to ensure an open, objective decision
- Affected Units of Local Government have two possible ways to participate

Deciding Whether To Adopt DOE's Environmental Impact Statement (EIS): How Affected Units of Local Government Can Participate



**Elmo Collins, Deputy Director
Licensing and Inspection Directorate**

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Nuclear Waste Policy Act Provisions

- NRC is required to adopt DOE's EIS "to the extent practicable"
- To the extent NRC adopts the EIS, NRC's environmental review responsibilities are satisfied

NRC Regulations Define Basis For Adopting DOE'S EIS

- NRC must adopt the EIS unless:

- NRC licensing action differs from the action proposed in the license application in a way that may significantly affect the environment

or

- Significant and substantial new information or considerations make the EIS inadequate

Possible Outcomes of NRC's Adoption Determination Process

- Adopt

- Supplement
 - DOE
 - NRC

NRC's Environmental Review Process

- EIS must accompany license application
- Docketing will be decided within 90 days of submission
- NRC EIS adoption determination will be published in Notice of Docketing/Hearing

How Affected Units of Local Government Can Participate

- If NRC were to determine that adoption of DOE's EIS is practicable, then a participant could:
 - Contest NRC's adoption decision as a party to the proceeding; or
 - Provide testimony as an Interested Government on any (admitted) contention filed by a party

Summary

- NRC's environmental review is limited by law
- NRC must adopt DOE's EIS unless certain, established criteria are met
- If NRC determines that adoption is practicable, affected units of local government may contest NRC's decision or provide testimony on contentions made by others