



REQUEST REPLY BY: 4/14/06
UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

COMPBL-06-0001/GBJ-06-0003

March 31, 2006

Disapproved with comments.

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: Peter B. Lyons *Requester*
Gregory B. Jaczko *Angela Cappuccino for*

SUBJECT: PUBLIC PARTICIPATION IN ADJUDICATIONS

Nils J. Diaz
Nils J. Diaz
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COMMUNICATIONS

The Commission is anticipating that in the near future applications for new reactor initiatives, such as combined operating licenses, early site permits, and applications for amendments to existing reactor licenses, will be received. Applications such as these may be of interest to members of the public who may wish to participate in the adjudicatory process. In light of this anticipated interest and to help facilitate meaningful participation, it is essential that the public become educated about our requirements for intervention so that stakeholders do not exhaust time and energy preparing petitions for intervention and to request a hearing that does not meet the standing and contention standards set forth in our regulations and caselaw. We believe that it is better for members of the public to become familiar with the Commission's standards before, rather than after, filing a hearing request in our proceedings.

The NRC's public website currently contains a comprehensive review of the opportunities that exist for public participation in the NRC hearings process. It includes many links to important sources, such as the NRC's Rules of Practice – 10 CFR Part 2, the NRC Practice and Procedure Digest, and a listing of existing hearing opportunities. Commission memoranda and orders in adjudicatory matters and Atomic Safety and Licensing Board hearing decisions may be accessed through the Agencywide Documents Access and Management System (ADAMS). Our *Federal Register* notices, too, set forth the standing and contention filing requirements in every notice that includes an opportunity to request a hearing.¹

Although excellent resources exist on the website regarding how to participate in NRC hearings, we feel that the public would benefit from specific information on our website regarding standing and contention admissibility standards. We, therefore, request the NRC staff to include a specific discussion in an appropriate location on our public website that summarizes the standing and contention admissibility standards as extracted from recent Commission orders and 10 CFR § 2.309. The staff should provide examples of some contentions that have met our rigorous standards. All NRC *Federal Register* notices that provide for an opportunity to request a hearing should reference the website's contentions admissibility standards discussion.

¹ On a related note, we understand that the Office of General Counsel is developing procedures that would allow potential intervenors to enter into protective agreements for access to restricted and sensitive information prior to becoming parties in an adjudication. We look forward to OGC's recommendations, which we anticipate will come to the Commission shortly.

Chairman Diaz's Comments on COMPBL-06-0001/COMGBJ-06-0003

I agree with my fellow Commissioners that it is essential for external stakeholders to be aware of, and understand, our processes for participating in NRC adjudicatory proceedings. Further, I believe that the agency currently provides ample public guidance on intervention requirements. As discussed in the COM, each notice of opportunity for hearing, published in the *Federal Register*, clearly sets forth the regulatory requirements that must be met in order to successfully obtain intervention. The COM also recognizes that the NRC's public Web site already contains several pages exclusively devoted to providing resources for members of the public interested in adjudications, including "Hearing Opportunities and License Applications," located at <<http://www.nrc.gov/what-we-do/regulatory/adjudicatory/hearing-license-applications.html>>, and "10 CFR Part 2: Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders", located at <<http://www.nrc.gov/what-we-do/regulatory/adjudicatory/part2revisions.html>>.

Further, as noted by both Commissioners McGaffigan and Merrifield in their votes on this paper, NUREG-0386, NRC's Practice and Procedure Digest, provides concise summaries and references on a variety of adjudicatory issues, including the procedural requirements for intervention. This NUREG is readily available on the NRC public Web site. Finally, adjudicatory orders of both the Commission and the Atomic Safety and Licensing Boards are available via the public Web site through the ADAMS system. Given these extensive resources already in place, providing additional information is not necessary.

Furthermore, as pointed out by Commissioner Merrifield, providing an illustrative list of admitted contentions may well result in an unwarranted reliance on those examples, and lead petitioners to believe that there is a "short answer" to the preparation of contentions. Each case is unique, and contention formulation not only depends upon those unique circumstances, but necessarily requires research involving familiarity with the application, the applicability of pertinent Commission regulations, and analysis of analogous cases. The Commission should not suggest otherwise to potential petitioners.

Finally, providing the specific discussion proposed in the COM raises an additional concern with respect to this matter. A petitioner bears the burden of formulating its own contentions. Commission precedent is clear that the Licensing Boards may not assist a petitioner in developing its case. By sifting through Commission precedent to *further* summarize the standing and contention admissibility requirements, and by providing particularized examples of admitted contentions expressly to assist potential petitioners, the staff runs the risk of appearing generally biased in favor of intervention. Rather, its role is to represent the interests of the NRC staff, and its position with respect to the application or staff order at issue. To undertake the project recommended in this COM could create an appearance of impropriety in this regard.

For these reasons, I do not approve the recommendations proposed in this paper.



4.7.06



REQUEST REPLY BY: 4/14/06
UNITED STATES

COMPBL-06-0001/GBJ-06-0003

NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 31, 2006

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: Peter B. Lyons *Proposed Changes for*
Gregory B. Jaczko

SUBJECT: PUBLIC PARTICIPATION IN ADJUDICATIONS

Disapproved
E. J. [Signature]
4/4/06
See attached comments

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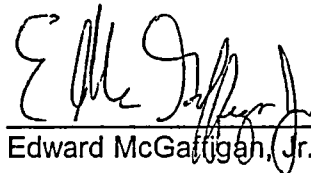
Commissioner McGaffigan's Comments on COMPBL-06-0001/GBJ-06-0003

I disapprove of taking additional, unnecessary steps intended to assist intervenors in writing their contentions. There is a duty incumbent upon potential intervenors to become knowledgeable of the current requirements governing intervention in NRC proceedings. I believe it is the duty of the Commission to ensure that public information is readily available and sufficiently complete and intelligible such that an prospective intervenor can determine whether and how to participate in NRC proceedings. As such, we provide the regulatory requirements for intervention (e.g. 10 CFR 2.309) in hearing notices. Furthermore, we provide copious amounts of guidance to assist a potential intervenor in understanding our clear requirements and standards for intervention.

On the homepage of the NRC public website, there is clearly displayed a link to the 'Hearing Opportunities' webpage which provides detailed information and helpful resources, including a link to the NRC's Practice and Procedure Digest, NUREG-0386, Digest 13 (this information is alternatively accessible through the 'Adjudications' webpage under the 'What We Do' webpage also accessible through the homepage, and countless other links throughout the website). The Practice and Procedure Digest provides well-organized, up to date, guidance on a myriad of topics, including intervention, using regulatory cites and caselaw to illustrate procedural requirements. No less than 110 pages are devoted to Intervention in the current version of the Digest, clearly discussing the standing and contention requirements for intervention.

If I were confident that adding additional guidance would effectively eliminate or diminish the number of clearly deficient intervention petitions, I would be more receptive. However, I believe that many attempts at intervention lack a genuine desire and intent to fully participate in NRC proceedings, and instead are a means to make public statements and pursue broader political agendas not tied to specific agency licensing actions. After failing to meet the clear standards for intervention, then bemoan the 'burdensome rule' and accuse the agency of being lapdogs of the nuclear industry and 'fully owned subsidiaries of NEI.' I fear no amount of additional guidance will prevent such misuses of our public proceedings.

The requirements in 10 CFR 2.309 provide a clear basic set of requirements that potential intervenors must be aware of concerning participation in NRC proceedings. Should there be any confusion regarding these requirements, the NRC has already provided clear guidance to assist in general understanding. Anything more would come close to assisting intervenors in making their standing arguments and crafting contentions, an act strictly prohibited in the NRC's mandate.


Edward McGaffigan, Jr.

4/4/06
(Date)



REQUEST REPLY BY: 4/19/06
UNITED STATES

COMPBL-06-0001/G3J-06-0003

NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 31, 2006

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: Peter B. Lyons *Peter Lyons*
Gregory B. Jaczko *Gregory Jaczko*

SUBJECT: PUBLIC PARTICIPATION IN ADJUDICATIONS

Disapproved. See attached comments

[Signature]
4/4/06

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Finally, the staff should be mindful during public meetings to refer specific queries related to the hearing process to the website discussion of the hearing process so that information provided to the public on hearings matters is uniform, consistent, and accurate. Members of the public should be encouraged to review the website and read the NRC's Federal Register notices concerning licensing actions.

cc: L. Reyes
K. Cyr
P. Bollwerk
J. Cordes

Commissioner Merrifield's Comments on COMPBL-06-0001/GBJ-06-0003


While I fully agree with Commissioners Lyons and Jaczko that potential intervenors should familiarize themselves with the Commission's requirements for participation in our proceedings *before* filing a hearing request, I do not agree that placing additional information on our website will result in more meaningful participation by members of the public.

First, my colleagues correctly point out that "excellent resources" already exist on the NRC website. Our regulations are straightforward, and adjudicatory decisions from the Atomic Safety and Licensing Board, as well as the Commission, can be accessed to see how these regulations are applied to petitions to intervene. In addition, the NRC Practice and Procedure digest is an excellent resource for understanding how our standards have been applied in cases with specific factual elements.

Second, I believe that including an additional summary of standing and contention admissibility standards and specific examples of "successful" contentions may have the unintended effect of hindering public participation. I fear that the information contained in this proposal is what the public would focus on instead of looking at our regulatory requirements and applying them to the specific facts of the proceeding they are interested in joining. There is no exact phraseology or supporting language that members of the public can employ and be guaranteed access to our adjudicatory process. Interested parties would be better served to review our regulations and how they were applied in cases with analogous circumstances. The bottom line is that there is no one right answer when it comes to contention admissibility, and I fear that the proposed effort would mislead well-intentioned members of the public into believing that there is a boilerplate answer to intervention.

Third, the NRC's adjudicatory procedures were found compliant with Administrative Procedure Act requirements when challenged in federal court. Additionally, the level of procedural information and guidance that the NRC makes available to the public is unprecedented among other federal entities.

On the basis of these considerations, I do not support providing additional information on the NRC website.



4/4/06