The Commission has under consideration and is making available to the public for its information a draft proposed Commission policy statement on the conduct of new reactor licensing. The draft policy statement is preliminary and may be subject to the revision as the Commission deliberates on the draft policy statement and the draft final Part 52 rule. The Commission intends to formally request public comment before finalizing a policy statement should the Commission decide that a policy statement in this area would be useful..

STATEMENT OF POLICY ON CONDUCT OF
NEW REACTOR LICENSING PROCEEDINGS

CLI-06-

I. INTRODUCTION

Because the Commission anticipates that the first several applications for combined licenses ("COLs") for nuclear power reactors will be filed within the next two years, the Commission has reexamined its procedures for conducting adjudicatory proceedings involving power reactor licensing. Such examination is particularly appropriate since the Commission will be considering these COL applications at the same time it expects to be reviewing various design certification and early site permit ("ESP") applications, and the COL applications will likely reference design certification rules and ESPs, or design certification and ESP applications. Hearings related to the COL and ESP applications will be conducted within the framework of our Rules of Practice in 10 C.F.R. Part 2, as revised in 2004, and the existing policies applicable to adjudications. The Commission has, therefore, considered the differences between the licensing and construction of the first generation of nuclear plants, which involved developing technology, and the currently anticipated plants, which may be much more standardized than previous plants.

We believe that the Part 2 procedures, as applied to the Part 52 licensing process, will provide a fair and efficient framework for litigation of disputed issues arising under the Atomic Energy Act of 1954, as amended ("Act") and the National Environmental Policy Act of 1969, as amended ("NEPA"), that are material to applications. Nonetheless, we also believe that additional improvements can be made to our process. In particular, the guidance stated in this policy statement is intended to implement our goal of avoiding duplicative litigation through consolidation to the extent possible.

The differences between the new generation of designs and the old, including the

degree of standardization, as well as the differences between the Part 50 and Part 52 licensing processes, have led the Commission to review its procedures for treatment of a number of matters. Given the anticipated degree of plant standardization, the Commission has most closely considered the potential benefits of the staff conducting its safety reviews using a "design-centered" approach, in which multiple applicants would apply for COLs for plants of identical design at different sites, and of consolidation of issues common to such applications before a single Atomic Safety and Licensing Board ("licensing board"). The Commission has also considered its treatment of Limited Work Authorization requests; the timing of litigation of both contested and uncontested safety and environmental issues; the nature and scope of uncontested proceedings; and the order of procedure for hearings on inspections, tests, analyses, and acceptance criteria ("ITAAC"), which are completed before fuel loading. In considering these matters, the Commission sought to identify procedural measures within the existing Rules of Practice to ensure that particular issues are considered in the agency proceeding that is the most appropriate forum for resolving them, and to reduce unnecessary burdens for all participants.

The new Commission policy builds on the guidance in its current policies, issued in 1981 and 1998, on the conduct of adjudicatory proceedings, which the Commission endorses. *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18 (July 28, 1998), 63 Fed. Reg. 41872 (Aug. 5, 1998); *Statement of Policy on Conduct of Licensing Proceedings,* CLI-81-8,13 NRC 452 (May 20, 1981), 46 Fed. Reg. 28533 (May 27, 1981). The 1981 and 1998 policy statements provided guidance to licensing boards on the use of tools, such as the establishment of and adherence to reasonable schedules, intended to reduce the time for completing licensing proceedings while ensuring that hearings were fair and produced adequate records. Since the Commission issued its previous statements, the Rules of Practice in Part 2 have been revised, and licensing proceedings are

now usually conducted under the procedures of Subpart L, rather than Subpart G. *See* "Changes to Adjudicatory Process," Final Rule, 69 Fed. Reg. 2182 (Jan. 14, 2004). Moreover, the earlier policy statements focus on proceedings for which a hearing is not mandatory, or on the contested portion of the proceeding. New reactor licensing proceedings on COL and ESP applications will also involve mandatory hearings; that is, the Act requires a hearing be held whether the application is contested or not. While the Commission has recently given its licensing boards guidance on mandatory hearings in the context of ESP proceedings (*see Exelon Generating Co., LLC* (Early Site Permit for Clinton ESP Site) *et al.*, CLI-06-20, slip op., 64 NRC ___ (July 26, 2006)*, Exelon Generating Co., LLC* (Early Site Permit for Clinton ESP Site) *et al.*, CLI-05-17, 62 NRC 5 (2005)), and is modifying 10 C.F.R. § 2.104(e) to refine the scope of mandatory hearings on COL applications, such hearings involve unique considerations warranting additional guidance. This statement of policy thus supplements the 1981 and 1998 statements.

With both the recent revisions to Part 2 and this guidance, the Commission's objectives remain unchanged. As always, the Commission aims to provide a fair hearing process, to avoid unnecessary delays in its review and hearing processes, and to enable the development of an informed adjudicatory record that supports agency decision making on matters related to the NRC's responsibilities for protecting public health and safety, the common defense and security, and the environment. In the context of new reactor licensing under Part 52, members of the public should be afforded an opportunity for hearing on each genuine issue in dispute that is material to the particular agency action subject to adjudication. By the same token, however, applicants for a license should not have to litigate each such issue more than once.

The Commission emphasizes its expectation that the licensing boards will enforce adherence to the hearing procedures set forth in the Commission's Rules of Practice in 10 C.F.R. Part 2, as interpreted by the Commission. In addition, the Commission has identified

certain specific approaches for its licensing boards to consider implementing in individual proceedings, if appropriate, to reduce the time for completing new licensing proceedings. The measures suggested in this policy statement can be accomplished within the framework of the Commission's existing Rules of Practice. The Commission may consider further changes to the Rules of Practice as appropriate to enable additional improvements to the adjudicatory process.

II. SPECIFIC GUIDANCE

Current adjudicatory procedures and policies provide the latitude to the Commission, its licensing boards and presiding officers to instill discipline in the hearing process and ensure a prompt yet fair resolution of contested issues in adjudicatory proceedings. In the 1981 and 1998 policy statements, the Commission encouraged licensing boards to use a number of techniques for effective case management in contested proceedings. Licensing boards and presiding officers should continue to use these techniques, but should do so with regard for the new licensing processes in Part 52 and the anticipated high degree of new plant standardization, which may afford significant efficiencies.

The Commission’s approach to standardization through design certification has the potential for resolving design-specific issues in a rule, which subsequently cannot be challenged through application-specific litigation. *See* 10 C.F.R. § 52.63 (2006). Matters common to a particular design, however, may not have been resolved even for a certified design. For example, matters not treated as part of the design, such as operational programs, may remain unresolved for any particular application referencing a particular certified design. In addition, a particular applicant may choose to complete portions of certain ITAAC, such as design acceptance criteria, during the COL proceeding. Further, site-specific design matters will not be unresolved. The timing and manner in which associated design certification and COL applications are docketed may affect the resolution of these matters in proceedings on

those applications, *e.g.*, with respect to what forum is appropriate for resolving an issue. As discussed further below, a design-centered review approach for treating such matters in adjudication may yield significant efficiencies in Commission proceedings.

As set forth below, the Commission has identified other approaches, as applied in the context of the current Rules of Practice in 10 C.F.R. Part 2, as well as variations in procedure permitted under the current Rules of Practice that licensing boards should apply to proceedings. The Commission also intends to exercise its inherent supervisory authority, including its power to assume part or all of the functions of the presiding officer in a given adjudication, as appropriate in the context of a particular proceeding. *See, e.g., Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-90-3, 31 NRC 219, 229 (1990). The Commission intends to promptly respond to adjudicatory matters placed before it, and such matters should ordinarily take priority over other actions before the Commissioners. We begin with the docketing of applications.

A. INITIAL MATTERS

1. Docketing of Applications

The rules in Part 52 are designed to accommodate a COL applicant's particular circumstances, such that an applicant may reference a design certification rule, an ESP, both, or neither. *See* 10 C.F.R. § 52.79. The rules also allow a COL applicant to reference a design certification or ESP application that has been docketed but not yet granted. *See* 10 C.F.R. §§ 52.27(c) and 52.55(c). Further, we have changed the procedures in 10 C.F.R. § 2.101 to address ESP, design certification, and COL applications, in addition to construction permit and operating license applications. Accordingly, a COL applicant may submit the safety information required of an applicant by §§ 52.79 and 52.80(a) and (b) apart from the environmental information required by § 52.80(c), as is now permitted by 10 C.F.R. § 2.101(a)(5). Similarly, a

COL applicant may request early site review under 10 C.F.R. § 2.101(a-1).

Notwithstanding these procedures, the Commission can envision a situation in which an applicant might want to present a particular ESP or COL application for docketing in a manner not currently authorized. For example, an applicant might wish to apply for a COL for a plant identical to those of other applicants under the design-centered approach, and request application of the provisions of 10 C.F.R. Part 52, Appendix N and Part 2, Subpart D, before it has prepared the site- or plant-specific portion of the application. Such an applicant might not be prepared to submit all portions of its application within the time provided by § 2.101(a)(5). Under such circumstances, the Commission would be favorably disposed to the NRC staff's entertaining a request for an exemption from the requirements of § 2.101. Such an exemption request, however, should be granted only if it is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. The Commission strongly discourages piecemeal submission of portions of an application pursuant to an exemption unless such a procedure is likely to afford significant advantages to the design-centered review approach described in more detail below. The Commission intends to monitor requests for exemptions from the requirements of § 2.101, and to issue a case-specific order governing such matters if warranted. Whether a COL application is submitted pursuant to § 2.101 or an exemption, the first part of an application submitted should be complete before the staff accepts the application for docketing. Similarly, the staff should not docket any subsequently submitted portion of the application unless it is complete.

2. Notice of Hearing

As required by 10 C.F.R. § 2.104(a), a Notice of Hearing on an application is to be issued as soon as practicable after the application is docketed. A Notice of Hearing for a complete COL application should normally be issued within about thirty (30) days of the staff's docketing of the application. Section 2.101(a)(5), which provides for submitting applications in

two parts, does not specify when the Notice of Hearing should be issued, nor is it clear when a Notice of Hearing would be issued for an application filed in parts under an exemption from § 2.101. With two exceptions, the Commission believes it most efficient to issue a Notice of Hearing only when the entire application has been docketed. The first exception is an application submitted in accordance with 10 C.F.R. § 2.101(a–1), which results in a decision on early site review. The second exception is an application requesting review under a design-centered approach, if site- or plant-specific information is initially incomplete and will be docketed separately. Under such circumstances, the Commission intends to issue an appropriate notice of hearing for the portion of the application reviewed under the design-centered approach, and a second notice limited to the remaining portion of the application upon its completion. Under all other circumstances, issuing the Notice of Hearing only when the entire application has been docketed will avoid piecemeal litigation.

3. Limited Work Authorizations

The Commission is considering whether to redefine the term "construction" in 10 C.F.R. § 50.10, as well as the provisions governing limited work authorizations. Even if these rules are amended as currently conceived, § 50.10 will still contain provisions for limited work authorizations to govern certain structures and associated preparatory work. Accordingly, we are providing additional guidance regarding limited work authorizations, which would apply whether we amend § 50.10 or not.

In all proceedings, the licensing boards should formulate hearing schedules to accommodate any limited work authorization request. Specifically, if an applicant indicates that it will request a limited work authorization, the licensing board should generally schedule the hearings so as to first resolve those issues prerequisite to issuing a limited work authorization. This may lead to hearings on environmental matters and the portions of the Safety Evaluation Report relevant to such findings before commencement of hearings on other issues. Such

considerations should be incorporated into the milestones set for each proceeding in accordance with Part 2, Appendix B.

In this regard, the staff should set its review schedule to give priority to preparation of the Environmental Impact Statement ("EIS") and those portions of the safety evaluation report covering matters on which the licensing board must make findings before it may permit a limited work authorization to issue. *See* 10 C.F.R. §§ 2.337(g), 2.1207.

B. TREATMENT OF GENERIC ISSUES

1. Consolidation of Issues Common to Multiple Applications

The Commission believes that generic consideration of issues common to several applications may well yield benefits, both in terms of effective consideration of issues and efficiency. Such benefits would accrue not only to the staff review process, but also to litigation of such matters before the licensing board. We acknowledge that consideration of generic matters common to several applications may be possible in several contexts. For example, an applicant might seek staff review of a corporate program such as quality assurance or security that is common to several of its applications. If contentions on such a program are admitted with respect to more than one application, consolidation of such contentions before a single licensing board may result in more efficient decision making, as well as conserving the parties' resources. Licensing boards should consider consolidating proceedings involving such matters, pursuant to an applicant's or their own motion under 10 C.F.R. § 2.317(b). In addition, different applicants may seek COLs for plants of identical design at multiple sites, as in the design-centered review approach, and may therefore seek to implement the provisions of 10 C.F.R. Part 2, Subpart D. In this regard, we have amended Subpart D and Appendix N to Part 52 to provide explicit treatment of COL applications for identical plants at multiple sites.

Because we believe that the design-centered approach is the chief example of

circumstances in which generic consideration of issues common to several applications may yield such benefits, we discuss that approach in detail below. While much has changed since we first promulgated Subpart D in 1975, we believe many of the concepts originally behind Subpart D still apply today, and we presume that Subpart D procedures, as well as other applicable Rules of Practice in 10 C.F.R. Part 2, will be applied to applications employing a design-centered review approach. Our vision for the implementation of a "design-centered" approach under the procedures of Subpart D is set forth below.

As indicated above, safety issues, such as those involving operational programs or design acceptance criteria, common to several applications referencing a design certification rule or design certification application may be most efficiently treated with a single review in a "design-centered" approach and, subsequently, in a single hearing. In order to achieve such efficiencies, however, applicants who intend to apply for licenses for plants of identical design and request the staff to employ the design-centered review approach should submit their applications simultaneously. Subpart D nonetheless affords the licensing board discretion to consolidate applications filed close in time, if this will be more efficient and otherwise provide for a fair hearing. While not required, we believe applicants for COLs for plants of identical design should consolidate the portions of their applications containing common information into a joint submission. In doing so, each applicant would also submit the information required by 10 C.F.R. §§ 50.33(a)-(e) and 50.37 and would identify the location of its proposed facility, if this information has not already been submitted to the Commission.

Appendix N requires that the design of those structures, systems, and components important to radiological health and safety and the common defense and security described in separate applications be identical in order for the Commission to treat the applications under Appendix N and Subpart D. The Commission believes that any variances or exemptions requested from a design certification in this context should be common to all applications.

In addition, while not required, the Commission encourages applicants to standardize the balance of their plants insofar as is practicable.

Subpart D provides flexibility in the hearing process since proceedings on some of the applications involved may be contested, while others may be uncontested. Further, the environmental review for a particular application may be completed before the safety review, while the reverse may be true for another. Each application will necessarily involve a separate proceeding to consider site-specific matters, and the required hearings, may, as appropriate, be comprised of two (or more) phases, the sequence of which depends on the circumstances. For any of the phases, the hearings may be consolidated to consider common issues relating to all or some of the applications involved.

An applicant requesting treatment of its application under the design-centered approach may seek to submit separate portions of the application at different times, pursuant to § 2.101(a)(5) or an exemption from § 2.101, as discussed above. The Commission intends to issue a separate Notice of Hearing limited to the portion of the application not treated under the design-centered review approach upon completion of the application. Such a procedure would not affect any prospective intervenor's substantive rights; *i.e.*, members of the public will still have a right to petition for intervention on every issue material to the Commission's decision on each individual application.

The staff would review the common information in the applications, or in the joint submission, for sufficiency for docketing, and if acceptable, would docket this information as a portion of each application. Each application would be assigned a docket number in connection with the first portion of the application docketed, which could be the common submission. The applicants should designate one applicant to be the single point of contact for the staff review of this common information, and to represent the applicants before the licensing board.

Consistent with our guidance set forth above, we would expect to issue a Notice of

Hearing only upon the docketing of at least one complete application that includes the common information. The Notice of Hearing will not only provide an opportunity to petition to intervene in the proceeding on the complete individual application, but will also provide such an opportunity with respect to the information common to all the applications, which would be docketed separately. Accordingly, upon issuance of such a notice, the Chief Judge of the Atomic Safety and Licensing Board Panel ("ASLBP" or "Panel") should, as is the normal practice, designate a licensing board to preside over the application-specific proceeding, and should also designate a licensing board to preside over the consolidated portions of the applications. Initially, these two licensing boards could be the same.

A person having standing with respect to one of the facilities proposed in the applications partially consolidated would be entitled to petition for intervention in the proceeding on the common information. Such a petitioner would be required to satisfy the other applicable provisions of § 2.309 with respect to the application being contested to be admitted as a party to the proceeding on the common information. Prospective petitioners having standing with respect to a proposed facility for which the application remains incomplete at the time of the initial Notice of Hearing would have another opportunity to petition to intervene (and propose contentions) with respect to the rest of the application upon the docketing of a complete application, but would not need to demonstrate standing a second time. Those persons granted intervention are required to designate a lead for common contentions, as required by § 2.309(f)(3); as stated above, applicants submitting common information under the design-centered approach would likewise designate a representative to appear before the licensing board. In addition, the presiding officer may require consolidation of parties in accordance with § 2.316.

The Commission is willing to consider other methods of managing proceedings involving consideration of information common to several applications. For example, the Commission

does not intend to foreclose the Chief Judge of the Panel from designating a licensing board to preside over common portions of applications on the motion of the applicants, even if separate proceedings have already been convened on one or more of the applications involved. In such a case, however, the applicants should jointly identify the common portions of their respective applications when requesting the Chief Judge to take such action. Petitioners admitted as parties to any affected proceeding would of course have the right to answer such a motion.

As stated above, upon issuance of a Notice of Hearing for a complete plant-specific application that includes information on "common issues," the Chief Judge of the Panel should designate a licensing board to preside over the plant-specific portion of each application that is then complete. Each licensing board, whether designated to consider the common issues or a specific application, should manage its respective portion of the proceedings with due regard for our 1981 and 1998 policy statements. We emphasize that the Chief Judge of the Panel should not designate another licensing board to consider specific aspects of a proceeding unless the standards we enunciated in *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-7, 47 NRC 307, 310-11 (1998) for doing so are met. These standards are that the proceeding involve discrete and separable issues; that multiple licensing boards can handle these issues more expeditiously than a single licensing board; and that the proceeding can be conducted without undue burden on the parties. *Id*.

An initial decision by the licensing board presiding over a proceeding on a joint submission containing information common to more than one plant-specific application will be a partial initial decision for which a party may request review under 10 C.F.R. § 2.341 (as is also provided in Subpart D) and which we may review on our own motion. Such a decision would become part of each initial decision in the individual application proceedings, which will become final in accordance with the regulation that applies depending on which subpart of our Rules of Practice has been applied in a proceeding on a particular application (*e.g.*, § 2.713 under

Subpart G; § 2.1210 under Subpart L). Accordingly, a decision on common issues would become final agency action only in the context of final Commission action with respect to an individual application.

Revisions of specific applications during the review process could result in formerly common issues being referred to the licensing board presiding over a specific portion of one or more applications. These issues would be resolved in the normal course of adjudication, but may well result in delay in final determination of the individual application. Further, the Commission directs the staff to resolve issues affecting more than one application before turning to those involving only a single application.

2. COL Applications Referencing Design Certification Applications

With respect to a design for which certification has been requested but not yet granted, the Commission intends to follow its longstanding precedent that "licensing boards should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rule making by the Commission." *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 345 (1999), *quoting Potomac Elec. Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974). In accordance with these decisions, a licensing board should treat the NRC's docketing of a design certification application as the Commission's determination that the design is the subject of a general rule making. We believe that a contention that raises an issue on a design matter addressed in the design certification application should be resolved in the design certification rule making proceeding, and not the COL proceeding. Accordingly, in a COL proceeding in which the application references a docketed design certification application, the licensing board should refer such a contention to the staff for consideration in the design certification rule making, and hold that contention in abeyance, if it is otherwise admissible. Upon adoption of a final design certification rule, such a contention should be denied.

An individual applicant, nonetheless, may choose to request that the application be treated as a “custom” design, and thereby resolve any specific technical matter in the context of its individual application. An applicant might choose such a course if, for example, the referenced design certification application were denied, or the rule making delayed. The application-specific licensing board would then consider contentions on design issues, which otherwise would have been treated in the design certification proceeding. Similarly, a COL applicant referencing a design certification application may request an exemption from one or more elements of the requested design certification, as provided in 10 C.F.R. § 52.63(b) and Section VIII of each appendix to Part 52 that certifies a design. As set forth in those provisions, such a request is subject to litigation in the same manner as other issues in a COL proceeding. Since the underlying element of the design may change after the exemption request is submitted, such an exemption may ultimately become unnecessary or may need to be reconsidered or conformed to the final design certification rule. Such matters would be considered by an application-specific licensing board. A licensing board considering a COL application referencing a design certification application might conclude the proceeding and determine that the COL application is otherwise acceptable before the design certification rule becomes final. In such circumstances, the license may not issue until the design certification rule is final, unless the applicant requests that the entire application be treated as a “custom” design.

COL applicants should coordinate with vendors applying for certified designs to ensure that decisions on design certification applications do not impede decisions on COL applications.

If design certification is delayed, a licensing board considering common technical issues may likewise be delayed. Nonetheless, an applicant may also propose site-specific resolution of outstanding issues for consideration in COL-application specific proceedings, subject to the considerations stated above.

3. Subsequent Applications Referencing a Design Certification Rule

If initial COL applicants referencing a particular design certification rule succeed in obtaining COLs, the Commission fully expects subsequent COL applicants to reference that design certification rule. In this event, the Commission would expect to develop additional processes to facilitate coordination of proceedings on such applications. We observe, however, that an issue associated with such matters as operational programs or design acceptance criteria may be resolved through the design-centered review approach for initial applications containing common information, but we do not intend to impose any resolution so obtained on subsequent COL applicants. While there is no requirement to adopt a previously-approved resolution to an issue, and subsequent applicants are free to use the most recent state-of-the-art methods to resolve such issues, we nevertheless urge such applicants to consider adopting previous solutions in order to maximize plant standardization. If a COL applicant adopts an approach to a technical issue previously found acceptable, no further staff review of the adequacy of the approach is necessary. Rather, the staff review should be limited to verification that the applicant has indeed adopted the previously approved approach and will properly implement it.

C. UNCONTESTED HEARING

As indicated above, we have recently laid down guidance for our licensing boards with respect to the conduct of hearings in uncontested proceedings or on the uncontested portions of proceedings. *See Exelon Generating Co., LLC* (Early Site Permit for Clinton ESP Site) *et al.*,

CLI-06-20, slip op., 64 NRC ___ (July 26, 2006) (Clinton II)*, Exelon Generating Co., LLC* (Early Site Permit for Clinton ESP Site) *et al.*, CLI-05-17, 62 NRC 5 (2005)(Clinton I). In addition, revised § 2.104 limits the scope of the mandatory hearing on a COL application to those matters that would have been considered in a construction permit application. We nonetheless re-emphasize that the purpose of such hearings is for the licensing board to perform its function as an independent check of the staff's review. *See Clinton I* at 40. While the licensing board should carefully probe the staff's findings and ask appropriate questions in performing this function, the board's task is to ensure that the staff's review was adequate and that the staff made findings with reasonable support in logic and fact. *Clinton II*, slip op at 4, citing *Clinton I,* 62 NRC at 39. In short, the scope of the mandatory hearing is limited, and licensing boards should decide simply whether the safety and environmental record is sufficient, in accordance with our decisions in *Clinton I and II*: The licensing board is not to repeat the staff's review. *Clinton I*, 62 NRC at 35, 38-40, *Clinton II*, slip op. at 13, 64 NRC at ___.

In performing these functions, the licensing board should bear in mind that the applicant, who has requested the Commission to issue a license, has the burden of proof with respect to whether the license or permit should be issued. *See* 10 C.F.R. § 2.325 (2006). In this regard, we note that the staff and the applicant will sponsor into evidence the basic documents that will form the record, *i.e.*, the application, safety evaluation report, EIS, and report of the Advisory Committee on Reactor Safeguards on the application. Accordingly, consideration of uncontested matters should begin with these documents. While we do not prescribe how the hearing should be run, and the licensing board has considerable flexibility in this regard (*see Clinton I*, 62 NRC at 42), we believe our process will be best served if the staff and applicant provide these documents to the licensing board promptly upon their becoming available. The licensing board may then review these documents, as appropriate, and set an appropriate schedule for the remainder of the proceeding, with due consideration of the needs of the

applicant and staff. We note that for a COL application referencing an ESP, the licensing board should not consider any matter resolved in the ESP proceeding.

In addition, we believe that the staff's design-centered review approach may well translate into efficiencies even with respect to uncontested matters. Specifically, a licensing board designated to consider common issues could also conduct the hearing on those common issues that remain uncontested, leaving the uncontested application-specific matters to the application-specific licensing boards. We believe this would avoid multiple reviews of such common issues in the COL application-specific proceedings. Further, the scope of an uncontested hearing should be exceptionally narrow in a proceeding involving a reactor design previously reviewed in other hearings. The licensing board may rely on a previous licensing board's consideration of the portions of the application common to an ongoing proceeding and a previous proceeding. The licensing board should not repeat its inquiry into those portions of the application previously considered in either a contested or uncontested portion of a hearing.

D. ITAAC

In first promulgating 10 C.F.R. Part 52 in 1989, we determined that hearings on whether the acceptance criteria in a COL have been met ("ITAAC-compliance hearings") would be held in accordance with the Administrative Procedure Act ("APA") provisions applicable to determining applications for initial licenses, but that we would specify the procedures to be followed in the Notice of Hearing. *See* 10 C.F.R. § 52.103(b)(2)(I) (1990); 54 Fed. Reg. at 15395. In enacting the Energy Policy Act of 1992, Congress subsequently confirmed our authority to adopt Part 52, and by statute accorded us additional discretion to determine procedures, whether formal or informal, for ITAAC-compliance hearings. *See* Atomic Energy Act § 189a.(1)(B)(iv), 42 U.S.C. §2239(a)(1)(B)(iv). We therefore amended 10 C.F.R. § 52.103(d) to provide that we would determine, in our discretion,"appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under [§ 52.103(a).]"

While we recognize that specification of procedures for the treatment of requests for hearings on ITAAC would lend some predictability to the ITAAC compliance process, we are not yet in a position to specify such procedures, since we have not approved even one complete set of ITAAC necessary for issuing a COL. Further, ITAAC-compliance hearings are likely several years distant, and we have no experience with the type and number of hearing requests that we might receive with respect ITAAC compliance. While it may not be necessary to consider the first requests for ITAAC-compliance hearings in order for us to determine the procedures appropriate to govern such hearings, we believe it premature to specify such procedures now. In addition, the staff is now formulating guidance on the times necessary for the staff to consider different categories of completed ITAAC, and this guidance should assist licensees in scheduling and performing ITAAC so as to minimize the critical path for staff consideration of completed ITAAC. Accordingly, we believe it prudent to wait at least until a

complete set of ITAAC has been approved in order to inform our decision on the procedures to apply to an ITAAC-compliance hearing.

That said, we do offer some preliminary guidance on ITAAC-compliance hearings. First, we believe a licensing board is well suited to address such matters, although we reserve our authority to preside over any specific proceeding. Further, we believe that no one subpart in our Rules of Practice in 10 C.F.R. Part 2 is particularly well-tailored to govern an ITAAC-compliance hearing. While we expect that such hearings may be held in accordance with less formal procedures, we intend to draw upon the various procedures in Part 2, with appropriate modification, to govern ITAAC-compliance hearings. We intend to confirm this by issuing case-specific orders specifying the applicable procedures upon receiving hearing requests in response to *Federal Register* notices issued pursuant to 10 C.F.R. § 52.103(a). While a separate subpart in Part 2 to govern ITAAC-compliance hearings may one day be warranted, we now believe an amendment to Part 2 should be undertaken only in light of experience gained from the first few such hearings.

III. CONCLUSION

The Commission reiterates its long-standing commitment to the expeditious completion of adjudicatory proceedings while still ensuring that hearings are fair and produce an adequate record for decision. The Commission intends to monitor its proceedings to ensure that they are being concluded in a fair and timely fashion. To this end, the Commission will act in individual proceedings, as appropriate, to provide guidance to licensing boards and parties, and to decide issues in the interest of a prompt and effective resolution of the matters set for adjudication.

For the Nuclear Regulatory Commission

ANNETTE VIETTI-COOK,
Secretary of the Commission

Dated at Rockville, Maryland,
this day of _____ 2006.