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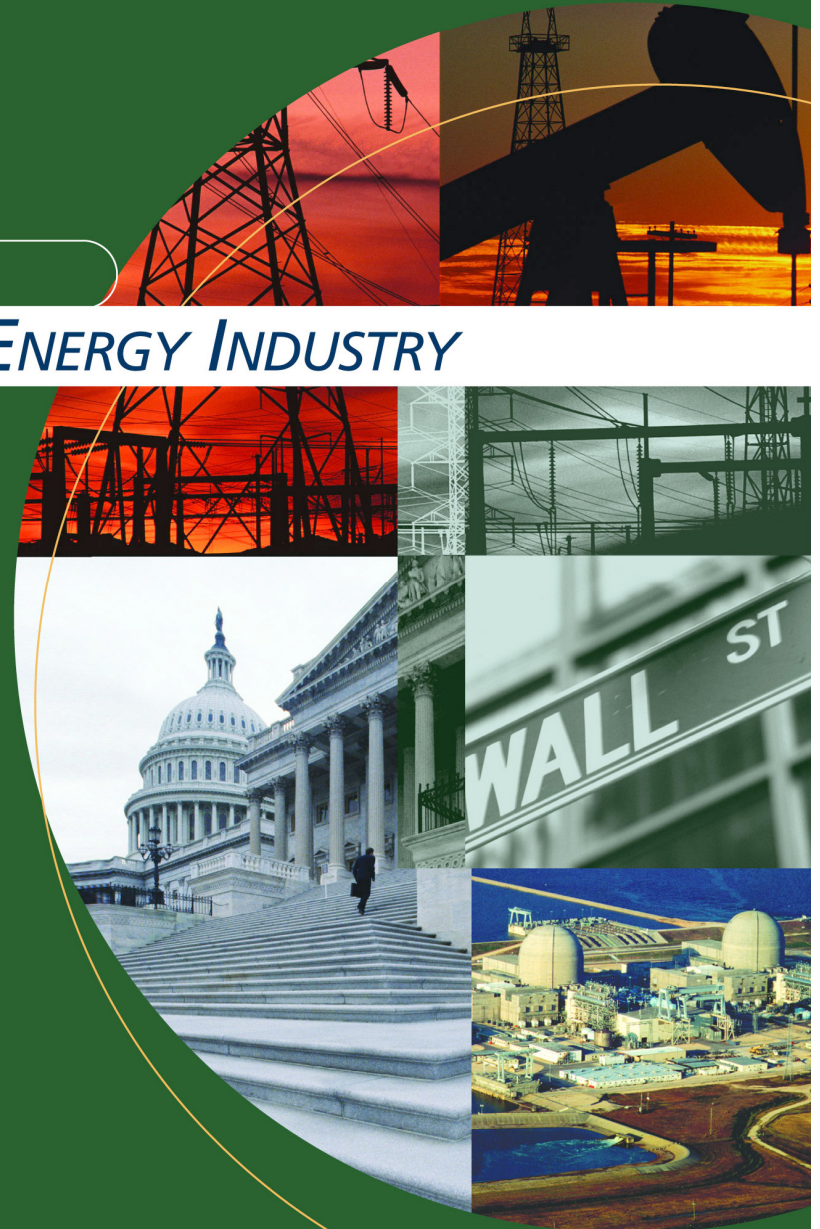
***NRC HEARING PROCESS
UPDATE AND RECENT
LEGAL/REGULATORY
DEVELOPMENTS FOR FUEL
CYCLE FACILITIES***

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OBJECTIVES

- ◆ Provide Brief Update/Overview of Hearing Process
- ◆ Discuss Some Recent Important Legal/Regulatory Developments That Could Affect Fuel Cycle License Applicants



WHAT TRIGGERS A HEARING?

- ◆ Any Licensing Request Including Applications for
 - New Licenses
 - License Amendments
 - Renewal of Licenses
 - License Transfers
- ◆ Enforcement Proceedings



RELATIONSHIP OF STAFF REVIEW/HEARING PROCESSES

- ◆ Separate Staff Safety and Environmental Reviews
- ◆ Parallel Hearing Process
- ◆ Decision on License Application by Director NMSS
 - To Be Issued Promptly and Effective Upon Issuance
- ◆ NMSS Director's Decision Subject to ASLB's Decision



PRE-HEARING PROCEDURES

- ◆ Notice of Opportunity to Request a Hearing in Significant Cases
 - Advises Public Regarding Procedures for Filing Requests for Hearing
 - Provides Direction on Timing and Legal Standards
 - Establishes Informal, 10 CFR Part 2 Subpart L Hearing Process
 - 10 CFR Subpart G Formal Process for Enforcement Proceedings and Uranium Enrichment Facilities



PRE-HEARING PROCEDURES

- ◆ Requests for Hearing Require Demonstration of:
 - Legal “Standing”
 - ◆ Injury in Fact within the Zone of Protected Interest
- ◆ At Least One Valid Contention
 - Genuine Issue of Material Fact or Law
 - Adequate Basis and Specificity
 - Within the Scope of the Proceeding
 - Adequate Supporting Facts or Expert Opinion



WHO IS THE ASLB?

- ◆ Three Judge Panel
 - All NRC Employees
 - Typically, One Lawyer, Two Technical Judges
 - Independent from Technical Staff
 - Appointed by Commission
- ◆ Controls Conduct of Hearing Process Including:
 - Schedules
 - Procedural Rulings
 - Ruling on Motions
 - Conduct of the Evidentiary Hearing
 - Findings of Fact/Conclusions of Law



MODEL SCHEDULING MILESTONES

- ◆ Milestones to Be Used As Guidelines by ASLB Set Forth in Part 2, Appendix B
- ◆ Different Milestones for Enforcement and Subpart L Proceedings
- ◆ Principal Subpart L Milestones
 - Keyed to NRC Staff Review Schedule
 - 140 Days From Federal Register Notice for ASLB Decision on Intervention Petitions/Admission of Contentions
 - 155 Days From SER/EIS for Filing of Written Direct Testimony
 - 90 Days From Close of Evidentiary Hearing for ASLB's Initial Decision
 - Other Milestones



DISCOVERY AND DISCLOSURE OF INFORMATION

- ◆ No Formal “Discovery” Except in Subpart G Proceedings
- ◆ NRC Staff Makes “Hearing File” Available
- ◆ Mandatory Disclosures
 - Experts and “All Documents Relevant to the Contentions”
 - Must Certify Completeness and Accuracy
 - Includes Emails, Internal Correspondence, Drafts, Etc.
 - Listing of Privileged/Protected Documents and Basis
- ◆ Continuing Duty to Disclose



EVIDENTIARY HEARING

- ◆ Commences After Publication of SER and SEIS
- ◆ “Oral” Hearing Includes:
 - Initial, Pre-filed Written Position Statements and Testimony
 - Responses and Rebuttal Testimony
 - Proposed Questions to the ASLB
 - Oral Questioning Only by the ASLB
 - Cross-Examination Only by Motion and if Necessary to Ensure an Adequate Record



INITIAL DECISION AND POST-HEARING PROCESS

- ◆ Proposed Findings of Fact and Conclusions of Law
- ◆ Decision by ASLB Immediately Effective
- ◆ Parties May Petition for Commission Review
- ◆ Parties May Seek a Stay Pending Commission Review
- ◆ Final Agency Action Appealable to Federal Court



CONCLUSION

- ◆ Even With the New Hearing Procedures, the Hearing Process Can be Resource Intensive and Affect Ultimate Outcome of the Licensing Process



LEGAL/REGULATORY DEVELOPMENTS

- ◆ Early Considerations for License Applicants
- ◆ Construction Activities Before EIS/License Issuance
- ◆ Timing of Hearing on Environmental Issues
- ◆ NEPA/Terrorism



EARLY CONSIDERATIONS FOR LICENSE APPLICANTS

- ◆ High-Quality Application Is Vital to the Process
 - NRC Resources Are Limited
 - Application Should Be Full and Complete
 - ◆ Utilize Experience from Past Applications
 - See e.g., Louisiana Energy Services, USEC, DCS, and Shaw Areva Applications
 - ◆ Incorporate Lessons Learned from Staff Requests for Additional Information (RAIs), Applicant Responses, and Experience in Hearings
 - Applicants Should Seek Clear “Meeting of the Minds” Regarding Staff Expectations
 - ◆ Early Meetings on Schedule, Template, and Structure of Application
 - ◆ “Key Issue” Identification and Discussion
 - ◆ Interactions on Level of Detail/Approach by Subject Area



CONSTRUCTION ACTIVITIES BEFORE EIS/LICENSE ISSUANCE

- ◆ AEA and Part 70 Provisions Currently Allow Limited Activities Prior to EIS/License Issuance
- ◆ Recent Rulemaking Regarding Construction/Site-Preparation Activities
 - Applies Only to Reactor Licensees
 - Two-Fold Purpose of the Rulemaking
 - ◆ Narrowed the Definition of “Construction” to Allow Applicants to Perform More Activities Without Any Prior NRC Approval
 - ◆ Created An Optional Phased Approach to Licensing Process
 - Allows for NRC Review of Certain Construction Activities *Before* It Completes Full Environmental Review for License Issuance



CONSTRUCTION ACTIVITIES (CONT.)

- Legal Rationale For the Rulemaking
 - ◆ Narrowing of Commission View of its Jurisdiction Over Construction Activities
 - ◆ Commission Is Authorized to Regulate Activities That Have a Nexus to Health/Safety and Common Defense/Security
 - ◆ Same Rationale Should Apply to Materials License Applicants
- ◆ Materials Applicants May Seek Similar Authority



TIMING OF HEARING ON ENVIRONMENTAL ISSUES

- ◆ 10 CFR Parts 2 and 51
 - Do Not Allow Boards to Commence Hearing On Environmental Contentions Prior to Final EIS Issuance
- ◆ Commission Orders in LES and USEC
 - Authorized Hearing in Advance of the Final EIS
 - LES Board Held Hearing on Draft EIS
- ◆ Recent Commission Decision in *Vogtle* ESP Proceeding
 - Hearing Prior to Issuance of Final EIS for “Special Circumstances” Only
 - ◆ “Particular Urgency”
 - ◆ All Parties Should Agree to Proceed in Advance of Final EIS



CONSIDERATION OF TERRORISM UNDER NEPA

- ◆ Commission Affirmed Longstanding Precedent in Recent License Renewal & ESP Proceedings
 - NRC Is Not Obligated to Evaluate the Environmental Impacts of Terrorist Attacks
 - Commission Disagreed with the 9th Circuit Decision
 - ◆ Diablo Canyon ISFSI Proceeding
 - ◆ NRC is Not Obligated to Follow the 9th Circuit Outside That Circuit
 - “Environmental” Effect Caused by Third-Party Miscreants Too Far Removed from Natural/Expected Consequences of Agency Action
 - Risk of Terrorism is Addressed in Design Basis Threat (DBT) for Category I Facilities
 - Judicial Appeals on NEPA/Terrorism Issue
 - ◆ 3rd Circuit Appeal (*NJ Dept. Env. Prot. v. NRC*)
 - ◆ DC Circuit Appeal (*St. of Utah v. NRC*)
 - ◆ Stay Tuned