

IN RESPONSE, PLEASE
REFER TO: M120629

June 29, 2012

MEMORANDUM FOR: Marian Zabler
Acting General Counsel

R. W. Borchardt
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary */RA/*

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 10:00
A.M., FRIDAY, JUNE 29, 2012, COMMISSIONERS'
CONFERENCE ROOM, ONE WHITE FLINT NORTH,
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

- I. SECY-12-0004 – FINAL RULE--10 CFR PARTS 2, 12, 51, 54, AND 61, "AMENDMENTS TO ADJUDICATORY PROCESS RULES AND RELATED REQUIREMENTS" (RIN 3150-AI43)

The Commission¹ approved a final rule amending 10 CFR Part 2 to improve the NRC's hearing process and make minor corrections and clarifications, subject to the attached changes. The most significant changes include amending the § 2.309 standards for hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the § 2.309(b) filing deadline; amending the mandatory disclosure and discovery provisions in subparts C, G, and L; and clarifying the Secretary's authority under § 2.346(j).

Following incorporation of these changes, the Federal Register notice should be reviewed by the Rulemaking, Directives, and Editing Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.
(EDO) (SECY Suspense: 7/30/12)

The staff should develop a pilot program to study the resource implications of a revised § 2.311 as envisioned in Option 1 of SECY-12-0004. To pursue this, OGC should provide the Commission a program proposal for its review and approval. The proposed pilot program should anticipate appropriate engagement with the public. The staff should use the results of this effort to provide the Commission with an analysis that compares the resource requirements of a regime such as suggested in Option 1 to those associated with the current rule. The resulting analysis should assess the extent to which potential benefits of early interlocutory appeal may be limited or diminished by the frequency with which denied environmental and other contentions become moot or for other reasons are not appealed to the Commission under

¹ Section 201 of the Energy Reorganization Act, 42 U.S.C. Section 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Chairman Jaczko, and Commissioners Svinicki, Apostolakis, and Ostendorff were present in the Conference Room. Commissioner Magwood participated in the meeting via speakerphone.

the current regime. In addition to information obtained from the pilot program, staff's analysis may consider other relevant information associated with the NRC's experience with long, complex litigation as well as any lessons learned from the High Level Waste proceeding (where appeals were governed by 10 C.F.R. § 2.1015 rather than § 2.311). Staff should provide a range of options for Commission review and approval.

The staff should ensure that it gives special attention to public education and outreach regarding the adjudicatory process, with the objective of fully and effectively communicating the rights, roles and responsibilities of participating in the adjudicatory process, both in general and in particular proceedings. The staff should continue its efforts to keep actual and potential participants informed of new publicly-available documents.

OGC, in consultation with staff, should prepare and submit to the Commission an information paper that does the following:

1. describes OGC's current practices regarding participation in NRC staff outreach meetings, including pre-application public meetings and environmental scoping meetings;
2. summarizes the staff practices, as well as any criteria the staff uses, in determining whether to participate in Subpart L proceedings and with regard to the various types of procedural or substantive issues within a proceeding; and,
3. describes staff practices regarding consideration of issues raised by contentions that are not admitted.

Attachment:
As stated

cc: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
EDO
OGC
CFO
OCAA
OCA
OIG
OPA
Office Directors, Regions, ACRS, ASLBP (via E-Mail)
PDR

Changes to the Final Rule in SECY-12-0004

1. The staff should ensure that the rule language approved in the ITAAC rule (10 CFR 2.340(j)) is incorporated into the Part 2 final rule before publication in the *Federal Register*.
2. The Statements of Consideration should more fully substantiate the agency's basis for making the changes to 2.309(c) by inserting a new paragraph on p. 37 before "This final rule simplifies..." as follows:

The similarity between §§ 2.309(c)(1) and (f)(2) has created some confusion and resulted in differing approaches to evaluating filings filed after the deadline in § 2.309(b). For example, in *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-05-32, 62 NRC 813 (2005), an Atomic Safety and Licensing Board questioned whether it was necessary for new or amended contentions filed after the deadline to satisfy both §§ 2.309(c)(1) and (f)(2). However, in *Florida Power & Light Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-06-21, 64 NRC 30, 33 (2006), the Commission evaluated whether the intervenors met *both* the "stringent requirements for untimely filings (10 C.F.R. § 2.309(c)) and late-filed contentions (10 C.F.R. § 2.309(f)(2))." This rulemaking presents an opportunity to resolve any ambiguity in the application of these standards. Because good cause is the factor given the most weight, the Commission is focusing on this factor and clarifying the requirements as explained below.

3. On page 21, 1st full paragraph, line 10, insert a comma after "possible."
4. On page 26, 2nd full paragraph, delete the next to last sentence (In cases where ... passed.)
5. On page 39, last paragraph, revise to read 'After a § 2.307 requested to extension of a filing deadline under § 2.307 is granted, if assuming the participant files by the new deadline (i.e., the extended date), then the participant's filing will be treated as if the participant filed by the deadline that was extended — in other words, the participant would need to **must only** satisfy the requirements that would have applied had the participant filed by the original deadline (i.e., the deadline that was extended). In other words, if a participant is granted a § 2.307 extension and files by the new deadline, the participant's filing is treated as if it were filed by the original deadline. Therefore, as an example, a participant would not need to satisfy final § 2.309(c)(1) So, if a the participant requested under § 2.307 to extend the applicable'
6. On page 40, revise lines 1 through 9 at the top to read ' ... filed by the new deadline. The participant would not need to satisfy final § 2.309(c)(1) under these circumstances extended date, then the participant would not need to satisfy final § 2.309(c)(1) because the participant's filing would be treated as if it were filed before the applicable deadline in § 2.309(b) and thus final § 2.309(c)(1) would not be triggered. However In contrast, a participant would need to satisfy final § 2.309(c)(1) if a the participant requested under § 2.307 to extend a specific ... and the participant filed by the new deadline. extended date, then the participant would need to satisfy final § 2.309(c)(1) since The participant

would need to satisfy final § 2.309(c)(1) under these circumstances because the § 2.309(b) deadline’

7. On page 42, revise line 3 from the top to read ‘ ... would **have** treated the’
8. On page 42, 1st full paragraph, revise line 1 to read ‘~~However, as~~ **As** previously’
9. On page 46, line 1 from the top, delete the extra space after “and.”
10. On page 51, 3rd full paragraph, revise line 4 to read ‘ ... after they ~~re~~ **are**’
11. On page 52, last paragraph, revise line 15 to read ‘ ... license, and **in** proceedings’
12. On page 55, last paragraph, revise line 4 to read ‘ ... if **a** prompt’
13. On page 56, revise line 2 from the top to read ‘ ... proceeding**”**’ In line 6 from the top, insert a space after the comma.
14. On page 62, 1st full paragraph after the bullet, revise line 1 to read ‘ ... exercising ~~her~~ **the authority** delegated authority to issue’
15. On page 89, paragraph 15., revise line 1 to read ‘ ... clarifies ~~that~~ the’
16. On page 91, paragraph 3.a., revise line 13 to read ‘ ... documents **for** the’
17. On page 107, paragraph (iv)(b), line 1, insert a comma after “docketed.”
18. On page 109, line 9 from the top, insert a comma after “application.”
19. On page 111, paragraph 7.(a), revise line 5 to read ‘ ... tests, analyse**s**, and’
20. On page 142, paragraph (A), in line 1 delete the space after “documents” and in line 6 delete the space after “document.”
21. On page 143, paragraph (7), revise line 3 to read ‘ ... would ~~be~~ **identify** the’
22. On page 154, paragraph (c), revise line 1 to read ‘ ... notices ~~for~~ **of** opportunity’