



The Atomic Safety and Licensing Board Panel

U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

THE ATOMIC SAFETY AND LICENSING BOARD PANEL

Through the Atomic Energy Act, Congress made it possible for the public to receive a full and fair hearing on civilian nuclear matters. Individuals who are directly affected by any licensing action involving a facility producing or utilizing nuclear materials can participate in a hearing before independent judges of the U.S. Nuclear Regulatory Commission (NRC) Atomic Safety and Licensing Board Panel (ASLBP or the Panel).

The ASLBP is the independent trial-level adjudicatory body of the NRC. Acting on behalf of the Commission, individual Licensing Boards conduct (1) public hearings concerning contested issues that arise in the course of licensing and enforcement proceedings regarding nuclear reactors and the civilian use of nuclear materials in the United States; and (2) uncontested hearings regarding matters such as the construction of uranium enrichment facilities. As such, the ASLBP fulfills both the NRC's obligation to afford the public and those subject to agency enforcement actions an opportunity to challenge proposed licensing and enforcement activities as required by Section 189(a) of the Atomic Energy Act (AEA) and its responsibility under AEA Sections 189(a) and 193 to conduct a public hearing regarding the construction of certain types of facilities, even if there is not a challenge by any affected person or entity. These hearings are conducted in accordance with the Administrative Procedure Act and the Commission's implementing regulations, set forth at 10 CFR Part 2.

A unique feature of the ASLBP that distinguishes it from similar federal regulatory or administrative tribunals is that each Licensing Board ordinarily is comprised of three administrative judges, usually consisting of one attorney skilled in the conduct of administrative hearings and two experts in scientific or technical areas relevant to the subject matter of the dispute. This scientific enhancement of the adjudicatory function is statutorily mandated by Section 191 of the AEA.

Conduct of ASLBP Proceedings

The NRC practice and procedure rules (10 CFR Part 2) provide a variety of hearing procedures ranging from the relatively informal to something comparable to a federal or state civil trial. As a practical matter, most cases regarding contested issues, or contentions, involve typical pleading and motions practice, including summary judgment (called summary disposition

in NRC practice), mandatory document disclosure, and evidentiary hearings. As in many administrative proceedings, pre-filed written testimony is used extensively. Nevertheless, with few exceptions, evidentiary proceedings consist of public hearings with sworn witnesses or panels of witnesses subject to questioning by the three Licensing Board members and, under certain circumstances, cross-examination by opposing counsel. Evidentiary proceedings are followed by detailed written decisions that, depending on the number and complexity of the contentions, can be quite lengthy. Licensing Board decisions can be appealed to the NRC Commission, and review of Commission decisions is available in the United States Courts of Appeals and, ultimately, in the Supreme Court of the United States. Significant Licensing Board decisions are published in "Nuclear Regulatory Commission Issuances" and are available on both LexisNexis and Westlaw.

Location of ASLBP Hearings

The ASLBP's primary hearing room is located at the NRC headquarters complex in Rockville, Maryland. However, consistent with the AEA's intent that decisions regarding licensing nuclear reactors or the use or possession of nuclear materials be made in public hearings in which the voices of those most directly affected may be heard and considered, it is NRC policy that important aspects of Licensing Board proceedings be held as near as practicable to the location of the proposed nuclear facility or material at issue. What this means in practice is that early in the proceeding oral argument concerning a petitioner's standing and the legal adequacy of its petition to intervene likely will be held in the vicinity of the proposed project, with the Licensing Board returning to that area when it conducts the evidentiary hearing on the merits of the admitted contested issues. In contrast, hearings that involve classified or safeguards information are generally held in the Panel's Rockville hearing room due to security considerations.

Litigation Technology

To handle large, complex proceedings efficiently and effectively, the Panel's Rockville hearing room utilizes a state of the art electronic courtroom that includes voice-activated digital video recording with cameras and display monitors and tele/videoconferencing and webstreaming systems that permit parties and witnesses to participate from multiple remote locations and members of the public to view proceedings over the Internet. This system also provides for the electronic marking of evidentiary material provided by the parties prior to or during the hearing, which can then be incorporated into the digital record of the proceeding that is accessible to the parties and the public.



Hearing Room, Rockville, Maryland

Issues for Adjudication

The ASLBP considers issues that arise from the operation of approximately one hundred U.S. commercial nuclear power plants, dozens of research and test reactors, and programs related to several thousand nuclear materials licenses. In recent years, ASLBP proceedings have addressed such diverse matters as licensing new reactors and uranium enrichment facilities, reactor license extensions, decommissioning, enforcement actions, reactor and materials license amendments, reactor operator licenses, and spent fuel storage.

Broadly speaking, the issues in contested NRC licensing adjudications fall into two generic categories: (1) safety/technical issues arising under the AEA; and (2) environmental issues arising under the National Environmental Policy Act (NEPA). By way of example, if a nuclear power plant's owner files an application to renew the facility's operating license for an additional 20 years beyond its original 40-year license, that application must include detailed analyses of the potential safety issues and environmental impacts posed by operating the plant for an additional 20 years. Members of the public, state and local governments, Native American tribes, and citizen organizations opposing the application can petition to intervene to contest the adequacy of the application's safety and/or environmental analyses.

Regardless of the pendency of an intervention petition, the NRC technical staff (an agency entity entirely separate from the ASLBP) conducts a thorough review and analysis of the technical and safety aspects of the application, and subsequently issues a Safety Evaluation Report (SER) that describes the staff's review and related findings. The staff also conducts a similar review on the environmental side, which typically results in the preparation of a full Environmental Impact Statement (EIS). Because major licensing actions generally require an EIS, Licensing Board cases regarding such activities usually have a significant NEPA component in addition to safety issues. By contrast, for uncontested hearings, the issues litigated are identified by the Licensing Board based on its review of the application and the draft and final SER and EIS prepared by the NRC staff.

ASLBP hearings often involve difficult, interdisciplinary questions at the cutting edge of science and technology. They are among the most complex and sometimes most controversial administrative proceedings conducted by the Federal Government.

Cases on the Horizon

The volume and complexity of adjudicatory matters coming before the ASLBP has increased in recent years. This trend may continue as numerous applications to construct new nuclear power plants are pending with the NRC. These are the first new U.S. reactor licensing proceedings in over a quarter century. Each of these applications potentially constitutes an enormous undertaking by the applicant and the NRC staff, as well as the ASLBP.

Panel Members

The Panel's judges include lawyers, physicists, engineers, and environmental scientists. They are employees of the NRC whose decisions are subject to Commission review, but the Administrative Procedure Act, as well as longstanding agency policy, grants them independence from the Commission. The agency's *ex parte* and separation of functions rules dictate that the Panel and its members remain at arm's length from the litigants, including the NRC staff, to avoid the appearance of a conflict of interest.

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