



ITAAC Hearing Procedures Public Meeting

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Michael Spencer, Senior Attorney
Office of the General Counsel
Michael.Spencer@nrc.gov



Background

What Are ITAAC?

- Inspections, tests, analyses, and acceptance criteria (ITAAC) verify that a new reactor has been constructed and will be operated consistent with NRC safety requirements.
- The inspections, tests, and analyses are the methods of verification.
- The acceptance criteria are the standards that must be satisfied.
- ITAAC are reviewed before the combined license is issued. There are 875 ITAAC in the Vogtle license.
- The NRC staff must find that all acceptance criteria are met before operation may begin (10 CFR 52.103(g)).

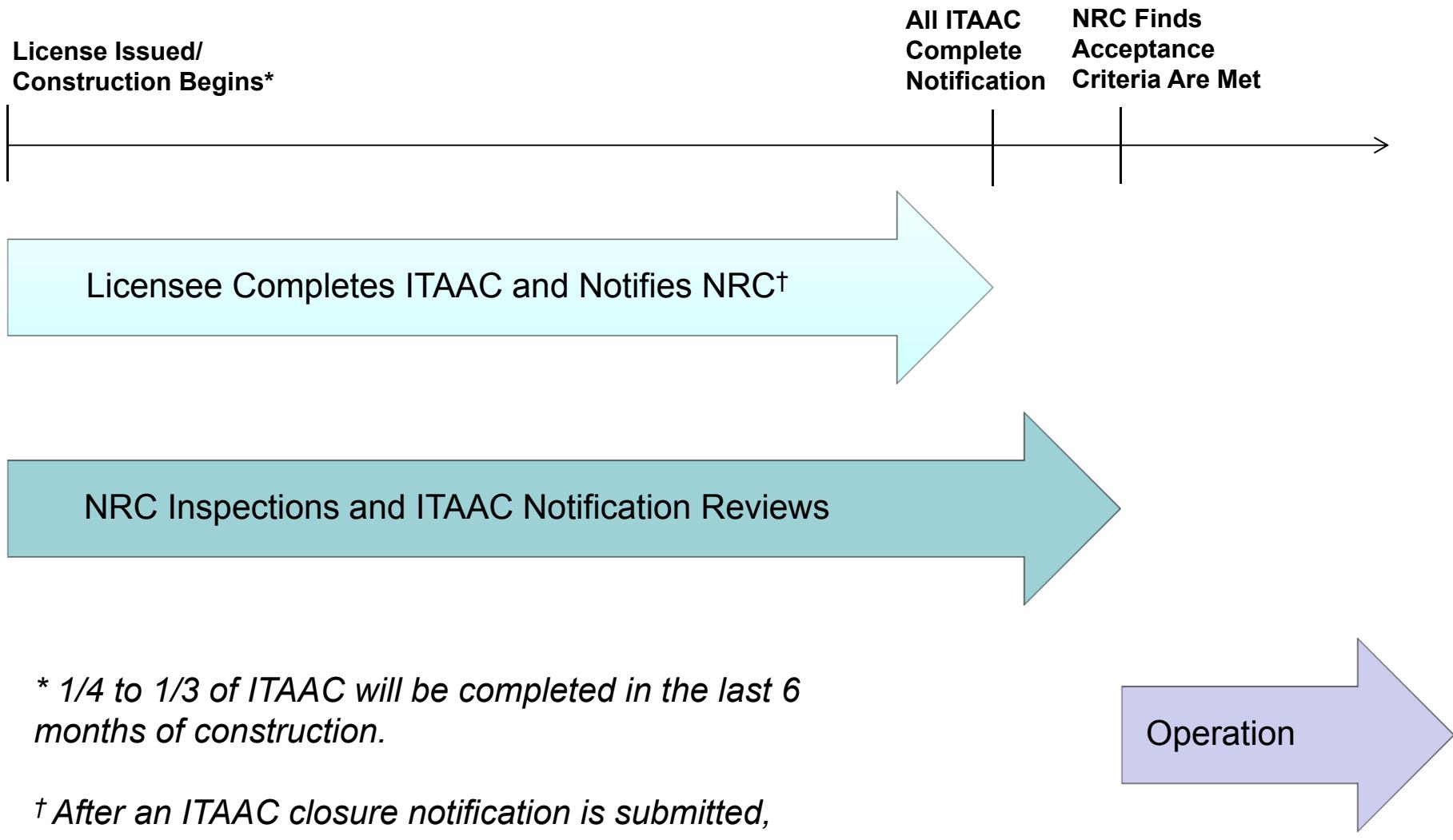
Examples of ITAAC

Design Commitment	Inspections, Tests, and/or Analyses	Acceptance Criteria
The refueling machine and fuel handling machine gripper assemblies are designed to prevent opening while the weight of the fuel assembly is suspended from the gripper.	The refueling machine and fuel handling machine will be tested by operating the open controls of the gripper while suspending a dummy fuel assembly.	The gripper will not open while suspending a dummy test assembly.
The RCS [Reactor Coolant System] provides circulation of coolant to remove heat from the core.	Testing and analysis to measure RCS flow with four reactor coolant pumps operating at no-load RCS pressure and temperature conditions will be performed. Analyses will be performed to convert the measured pre-fuel load flow to post-fuel load flow with 10-percent steam generator tube plugging.	The calculated post-fuel load RCS flow rate is > 301,670 gpm.

How Are ITAAC Closed?

- Licensee completes ITAAC throughout construction
- NRC inspectors oversee licensee ITAAC completion
- Licensee submits ITAAC closure notifications to describe successful ITAAC completion
- NRC staff reviews ITAAC notifications and determines whether ITAAC have been completed
 - These are interim determinations; nothing is final until 52.103(g) finding at end of construction
- ITAAC are no longer requirements after the 52.103(g) finding that acceptance criteria are met.

ITAAC Closure Timeline



* 1/4 to 1/3 of ITAAC will be completed in the last 6 months of construction.

[†] After an ITAAC closure notification is submitted, Licensee must notify the NRC if new information calls ITAAC completion into question.

Hearing Opportunity

- Atomic Energy Act (AEA) provides a hearing opportunity on whether the acceptance criteria have been or will be met.
 - Hearing request limited to conformance with acceptance criteria.
 - No environmental contentions.
 - A challenge to the ITAAC itself will not give rise to an admissible contention but can be made under 52.103(f).
- Federal Register Notice of Intended Operation will announce this hearing opportunity.
 - Must be published at least 180 days before fuel load
 - NRC's stated goal is to publish 210 days before fuel load

Hearing Opportunity (cont.)

- ITAAC hearing requests must be submitted within 60 days of the notice of intended operation
- ITAAC hearing requests must demonstrate standing and include an admissible contention.
- AEA § 189 requires ITAAC hearing requests to include a special “prima facie” showing:
 - “A [hearing request] shall show, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.”

Hearing Opportunity (cont.)

- There are ITAAC that will not be completed when the hearing request is due
 - Licensees must submit uncompleted ITAAC notifications at least 225 days before fuel load describing the plans for completing these ITAAC.
 - These notifications will provide information to support the filing of hearing requests.
- Answers to hearing requests are due within 25 days.
- No replies to answers are permitted.
- AEA § 189: The Commission is to expeditiously grant or deny the hearing request.

If hearing request is granted...

- AEA § 189: NRC shall “to the maximum possible extent” issue a decision on the hearing issues by the later of (a) 180 days after the notice of intended operation, or (b) scheduled fuel load.
 - If the notice of intended operation is issued 210 days before fuel load, the later of the above two dates will be fuel load.
 - With 60 days given for hearing requests and 25 days given for answers, that leaves 125 days to (a) decide on the hearing request, (b) complete any hearing, and (c) issue a decision.
- AEA § 189: The NRC may use formal or informal procedures of its choosing.
- 10 CFR 2.310(j): ITAAC hearing procedures will be designated by the Commission in each proceeding.

Interim Operation

- AEA § 189: *If a hearing request is granted*, the Commission shall determine whether to allow interim operation.
- Interim operation is intended to prevent the ITAAC hearing from unnecessarily delaying plant operation.
- Interim operation shall be allowed if:
 - The Commission determines that there is reasonable assurance of adequate protection of the public health and safety during interim operation, AND
 - The NRC staff makes the 52.103(g) finding that all acceptance criteria are met.
- More information on interim operation in SECY-13-0033.

Interim Operation (cont.)

Adequate Protection Determination for Interim Operation

- The AEA requires the Commission to consider the petitioner's *prima facie* showing and the answers thereto.
- Adequate protection determination is not a ruling on the merits of the petitioner's *prima facie* showing.
- Interim operation was intended for situations in which the alleged safety problem would not arise during the interim period or where mitigation measures could be taken to assure adequate protection.
- Interim operation may include conditions to assure adequate protection.

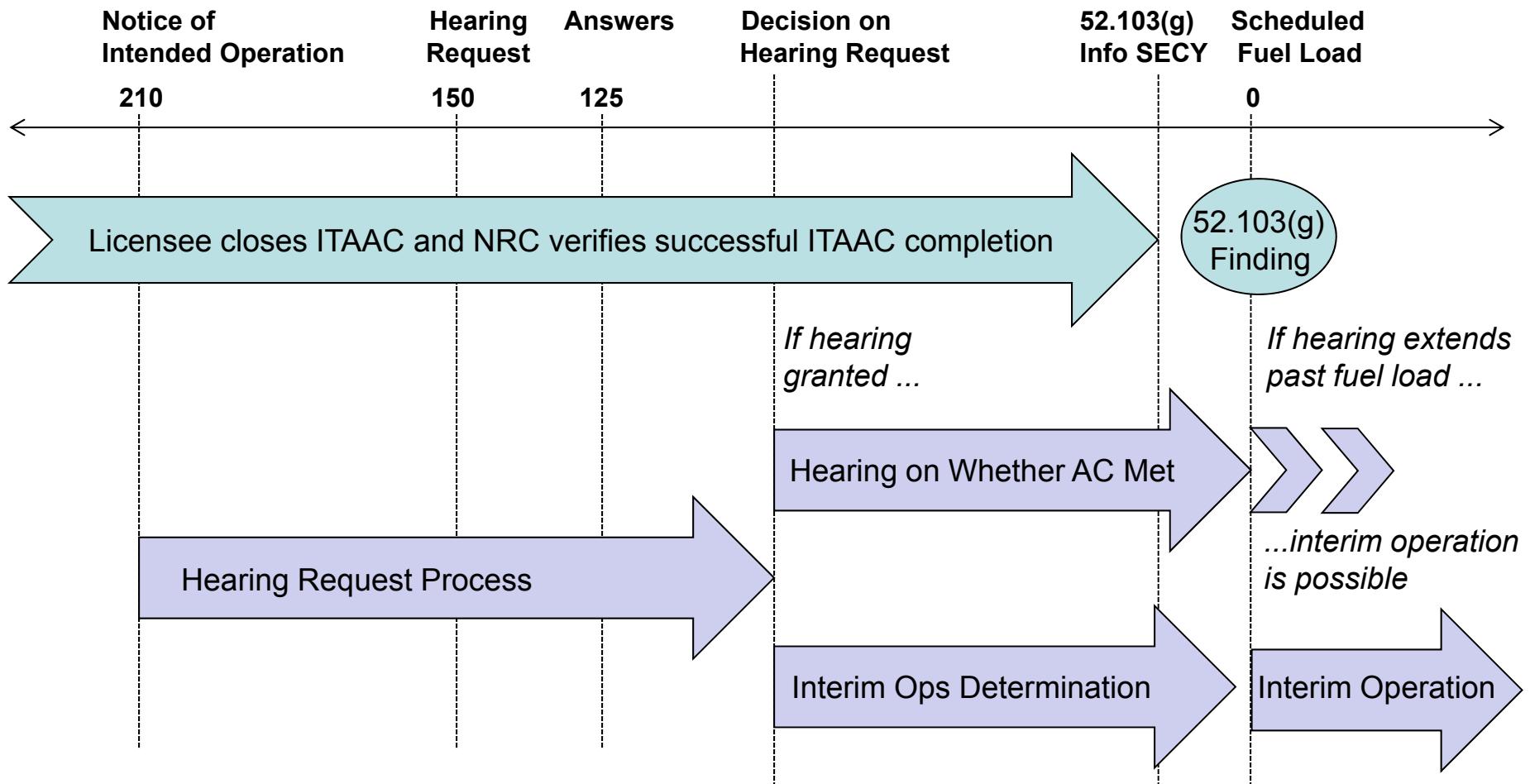
Commission Involvement

- In the 2008 Policy Statement on Conducting New Reactor Licensing Proceedings, the Commission announced that it would be responsible for three decisions related to ITAAC hearings:
 - The decision on whether to grant the hearing request.
 - The adequate protection determination for interim operation.
 - The designation of the ITAAC hearing procedures.
- The Commission has not decided who will serve as the presiding officer for the hearing (e.g., licensing board, Commission, etc.)

Parallel Paths

(ITAAC Closure/Hearing/Interim Operation)

Days Before Scheduled Fuel Load





Proposed ITAAC Hearing Procedures

Procedure Development Process

- ITAAC hearing procedures will be designated in each proceeding by case-specific orders.
 - Consistent with the AEA and NRC regulations
 - Case-specific orders promote flexibility
 - Lessons-learned can quickly be applied to subsequent proceedings
- However, the NRC staff has proposed general procedures with templates to promote efficiency and predictability.
 - Public has an opportunity to provide input
 - Stakeholders will have time to become familiar with the procedures prior to the hearing
 - Commission can modify the templates for case-specific reasons, but no ad hoc development of procedures.

Overarching Approach to Procedure Development

- Implemented existing law and policy on ITAAC hearings
- Used existing NRC hearing procedures as practical
- Procedures accommodate 3 presiding officer choices
- Procedures support a hearing decision by fuel load
- Hearings involving testimony employ a modified Subpart L approach, with written filings preceding an oral hearing.
 - Written testimony and position statements provide clarity/precision
 - Presiding officer will have time to consider the parties' positions and prepare all oral questions necessary to reach a decision
 - Decision can be written and issued soon after the hearing

Steps to Meet the AEA Goal for the Hearing Schedule

- Decision on hearing request issued 30 days from answers.
- Testimony development begins immediately thereafter
- Eliminated certain time/resource-intensive procedures (e.g., contested dispositive motions, written motions in limine)
- Shortened deadlines for most tasks
- Strict deadline for hearing decision. Unavoidable and extreme circumstances required for an extension.
- Can we issue the notice of intended operation earlier than 210 days before fuel load?
 - This would require licensees to submit uncompleted ITAAC notifications earlier than required.
 - What are pros and cons? How early should the notice be issued?

Hearing Tracks

- Contentions not involving testimony (legal contentions) would be resolved through legal briefs
- Contentions involving testimony could use one of two hearing tracks:
 - Track 1 has written direct testimony and written rebuttal testimony (95 days).
 - Track 2 has written direct testimony but no written rebuttal testimony (80 days).

ITAAC Hearing Timelines

Days before Scheduled Fuel Load

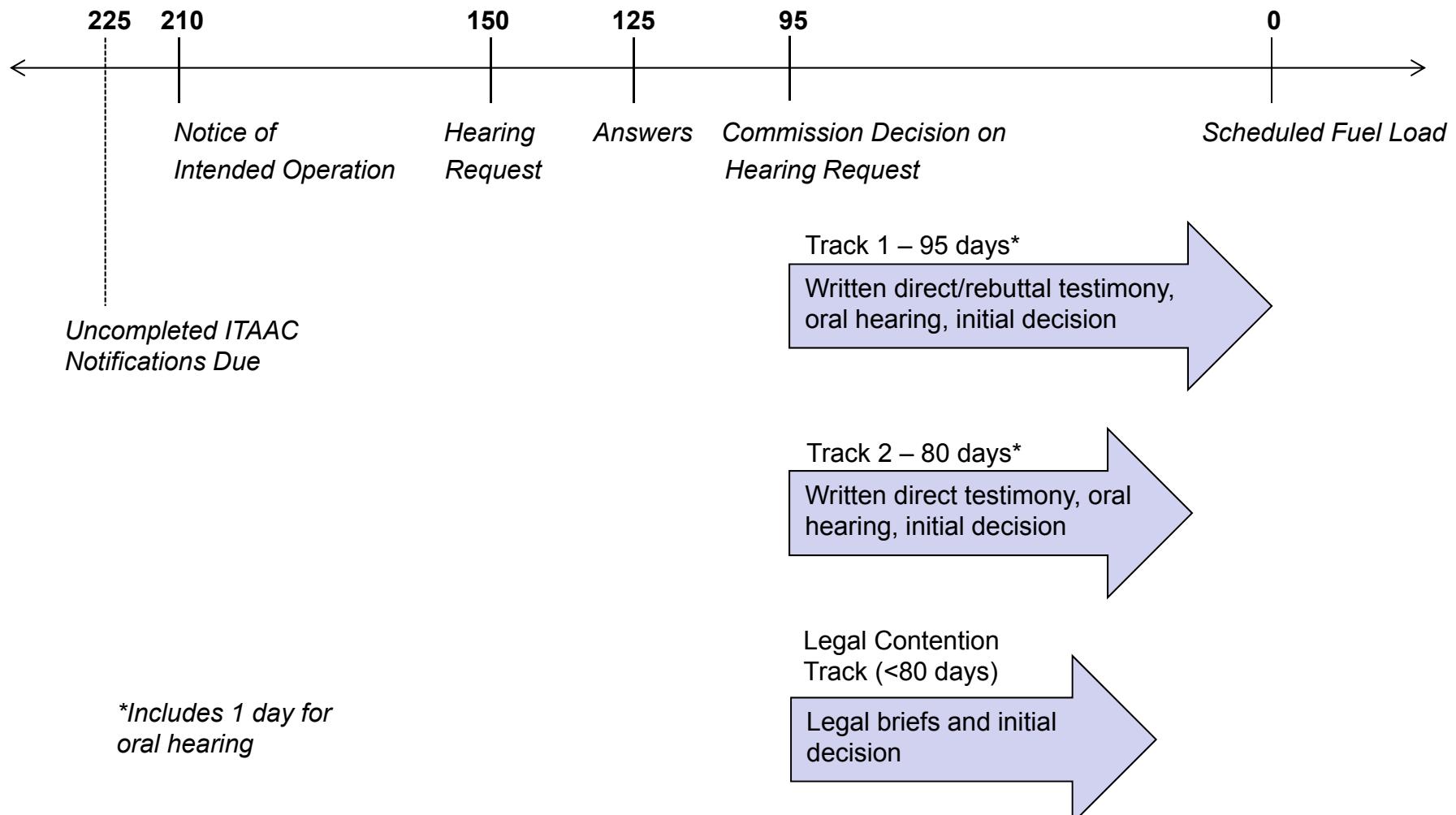


Table 1 – Track 1 and Track 2 Schedules

Event	Target Date	Target Date	Target Date Type
	<i>Track 1</i>	<i>Track 2</i>	
Prehearing Conference	Within 7 days of the grant of the hearing request	Within 7 days of the grant of the hearing request	Milestone
Scheduling Order	Within 3 days of the prehearing conference	Within 3 days of the prehearing conference	Milestone
Document Disclosures; Identification of Witnesses; and NRC Staff Informs the Presiding Officer and Parties of its Decision on Whether to Participate as a Party	15 days after the grant of the hearing request	15 days after the grant of the hearing request	Default Deadline
Pre-filed Initial Testimony	35 days after the grant of the hearing request	35 days after the grant of the hearing request	Milestone
Pre-filed Rebuttal Testimony	15 days after initial testimony	No rebuttal	Milestone
Proposed Questions; Motions for Cross-Examination/Proposed Cross-Examination Plans	7 days after rebuttal testimony	7 days after initial testimony	Milestone
Answers to Motions for Cross-Examination	5 days after the motion for cross-examination OR oral answer to motion presented just prior to the beginning of the hearing	5 days after the motion for cross-examination OR oral answer to motion presented just prior to the beginning of the hearing	Milestone
Oral Hearing	15 days after rebuttal testimony	15 days after initial testimony	Milestone
Joint Transcript Corrections	7 days after the hearing	7 days after the hearing	Milestone
Findings (if needed)	15 days after the hearing or such other time as the presiding officer directs	15 days after the hearing or such other time as the presiding officer directs	Milestone
Initial Decision	30 days after the hearing	30 days after the hearing	Strict Deadline

Accessing Sensitive Information

- A SUNSI-SGI Access Order would be issued with the notice of intended operation.
 - Request for access must be filed within 10 days of the notice or within 10 days of the need for access.
 - Access to SUNSI requires a need for the information and access to SGI requires a “need to know”
 - Access to SGI requires a background check.
 - Because SGI background checks take time, a pre-clearance process will be announced about 1 year before fuel load.
 - The NRC will not delay completing the hearing or making the 52.103(g) finding if this pre-clearance process is not used.

Mandatory Disclosures

- If a hearing request granted, there will be mandatory disclosures of relevant documents and identity of opinion and fact witnesses.
 - Disclosures required 15 days from the grant of hearing request
 - Updates due every 14 days thereafter
- No other discovery allowed
 - No formal discovery (e.g., depositions, interrogatories) because the potential for delay outweighs possible benefits
 - No hearing file is necessary because of other avenues for accessing information
 - SUNSI-SGI Access Order would continue to apply to requests for SUNSI/SGI unrelated to admitted contentions.

Notifications of Relevant New Developments

- *General Duty:* Parties obliged to notify presiding officer and other parties of relevant new developments.
- *Additional Requirements for Pending Contentions:*
 - Licensee and NRC staff must report changes to status of challenged ITAAC in their answers.
 - After answers are filed...
 - Parties must timely report changes to status of challenged ITAAC.
 - Licensee must make same-day notice of ITAAC closure and post-closure notifications on challenged ITAAC.
 - Obligations apply until decision on contention admissibility.

Notifications of Relevant New Developments (cont.)

Additional Requirements for Admitted Contentions:

- Licensee must make same-day notice of ITAAC closure and post-closure notifications on challenged ITAAC.
- If licensee notifies presiding officer and parties of an ITAAC closure or post-closure notification or of ITAAC re-performance, then:
 - Notice must state the effect of the notice on the proceeding.
 - Other parties must respond in 7 days with their views on the notice's effect on the proceeding, but an intervenor need not address plans for filing a new or amended contention.
- Obligations apply until the appeal period has terminated.

Claims of Incompleteness

- 10 CFR 2.309(f)(1)(vii): If an incomplete licensee ITAAC notification prevents the petitioner from making the necessary *prima facie* showing, the petitioner must:
 - Specifically identify the incompleteness and
 - Explain why the incompleteness prevents the petitioner from making the *prima facie* showing.
- The petitioner must show standing and satisfy the contention requirements to the extent it can.
- If claim of incompleteness is valid, the Commission will order the licensee to provide the missing information.
- Petitioner can file contention based on this information. Hearing request will not be granted until the *prima facie* showing is made.

Interim Operation

- Adequate protection determination will be based on hearing request and answers thereto.
 - Parties should address time period and modes of operation during which alleged concern arises
 - Licensee can propose mitigation measures.
- If contention admitted, Commission may order briefing.
- If the licensee proposes mitigation measures...
 - Before a ruling on the hearing request, parties may not respond to the mitigation measures but a briefing opportunity will be provided if the hearing request is granted
 - After a decision on the hearing request, parties will be given 20 days to respond to proposed mitigation measures.

Hearing Requests, Intervention Petitions, New/Amended Contentions, and Claims of Incompleteness After the Deadline

- Must show “good cause” (10 CFR 2.309(c))
- When should filing be made?
 - Options for comment: 30 days from new information? 20 days? Some time in-between?
- When should answers be filed?
 - Options for comment: 25 days? 15 days? Some time in-between?
- Should reopening standards ever apply to such filings?
 - Arguably, the “good cause” requirement and *prima facie* showing address the reopening requirement’s purposes.

General Motions and Motions for Extension of Time

- General Motions: Must be filed 7 days after event giving rise to motion and answers are due 7 days thereafter
- Motions for extension of time requirements:
 - Must show good cause; 10 CFR 2.334(b) factors considered.
 - “Good cause” will be interpreted strictly, and a showing of “unavoidable and extreme circumstances” will be required for more than very minor extensions.
 - Motion must be filed ASAP and absent exceptional circumstances, no later than 2 business days from event.
 - NRC specifically requests comment on “very minor extensions” language and “2 business days from event” language.

Interlocutory Review and Certified Questions/Referred Rulings

- Interlocutory review will be allowed for rulings on access to SUNSI/SGI
- Should interlocutory review be allowed in other circumstances?
 - Option 1: No.
 - Option 2: Other requests for interlocutory review are allowed, but they will be disfavored and must meet 10 CFR 2.341(f).
- Certified questions and referred rulings allowed, but presiding officer should issue ruling if possible to avoid delay.

Reconsideration and Stays

- **Reconsideration – Options for comment:**
 - Reconsideration allowed in accordance with current rules
 - Reconsideration allowed only for initial decisions after hearing and appeals of initial decisions
 - No reconsideration allowed
- **Stays**
 - No stay requests allowed for interim operation decisions since this is the statutory process for determining the immediate effectiveness of the 52.103(g) finding.
 - Other stay requests allowed in accordance with current rules

Comments on Procedures

- Federal Register notice:
<http://www.gpo.gov/fdsys/pkg/FR-2014-04-18/pdf/2014-08917.pdf>
- Comment period closes on July 2, 2014
- Comments must be in writing and may be submitted by the following methods:
 - Comments may be submitted electronically by going to www.regulations.gov and searching for Docket ID NRC-2014-0077.
 - Comments may also be mailed to Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN-06-44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.