

June 2, 2014

MEMORANDUM TO: Patrick Moulding, Assistant General Counsel
New Reactor Programs Division
Office of the General Counsel

FROM: Michael A. Spencer, Senior Attorney/*RA*/
New Reactor Programs Division
Office of the General Counsel

SUBJECT: PUBLIC MEETING ON PROPOSED ITAAC HEARING
PROCEDURES

On May 21, 2014, a Category 3 public meeting was held at the U.S. Nuclear Regulatory Commission (NRC) headquarters in Rockville, MD, to discuss the "Proposed Procedures for Conducting Hearings on Whether Acceptance Criteria in Combined Licenses Are Met," which was published in the *Federal Register* on April 18, 2014, <http://www.gpo.gov/fdsys/pkg/FR-2014-04-18/pdf/2014-08917.pdf>. A list of attendees, including those who participated by teleconference, is in Attachment 1. Participants included representatives from public interest groups, the nuclear industry, and the NRC.

The public meeting notice was issued on May 6, 2014 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML14126A691). An agenda was distributed at the public meeting and is included as Attachment 2. As stated in the meeting notice, this public meeting was held to allow for an exchange of information between the NRC and the public regarding the proposed procedures, the rationale therefor, and suggestions from the public regarding possible alternatives to approaches taken in the proposed procedures. Statements made at the public meeting are not being treated as formal comments on the proposed procedures because the NRC hopes that the discussion at the public meeting will help inform the public's written comments on the proposed procedures, which must be submitted by July 2, 2014, through the means described in the *Federal Register* notice.

After introductions, the NRC presented slides (ADAMS Accession No. ML14149A447) that provided background information on inspections, tests, analyses, and acceptance criteria (ITAAC) and the ITAAC closure process, and that summarized existing law and policy on ITAAC hearings and significant features of the proposed procedures. After this presentation, representatives from public interest groups, the nuclear industry, and the NRC engaged in discussion on the proposed procedures. A transcript of the meeting is available at ADAMS Accession No. ML14147A200.

Discussion on the proposed procedures covered a wide range of topics:

- Several speakers expressed their appreciation for the NRC's efforts in developing detailed ITAAC hearing procedures and for the opportunity to provide input on the proposed procedures.
- Stephen Burdick from Morgan Lewis said that it would be helpful to the participants in the hearing and to a licensing board (if a licensing board were to conduct the hearing) to

know ahead of time which entity will conduct the hearing. Mr. Burdick asked whether the NRC staff and the Office of General Counsel (OGC) have considered requesting that the Commission make a decision on who will conduct the hearing as part of its decision on the proposed procedures. Michael Spencer from OGC replied that it would be particularly important for the entity conducting the hearing to get advance notice of this, that the proposed procedures already contemplate this, and that the NRC staff is considering asking the Commission to make a decision on who will conduct the hearing as part of its deliberations on the proposed procedures.

- Michael Keegan from Don't Waste Michigan stated his belief that the proposed procedures are a labyrinth designed to prevent public participation.
- Peter LeJeune from Balch & Bingham asked what guidance can be given to clarify the standard to be applied to a claim of incompleteness. Michael Spencer from OGC responded that the standard in the proposed procedures is based on the text of 10 CFR 2.309(f)(1)(vii), with the additional clarification that the NRC expects claims of incompleteness to be well supported. Mr. Spencer said that the proposed procedures do not go beyond this and that it may be difficult to do so given the fact-intensive nature of the inquiry.
- Ryder Thompson from SCANA asked about the NRC's need for additional resources to participate in and conduct an ITAAC hearing. Jody Martin from OGC replied that while there is some uncertainty about the additional resources needed for an ITAAC hearing, the NRC is planning for this need.
- Jason Zorn from Westinghouse asked whether the proposed procedures accounted for the possibility that if a claim of incompleteness is determined to be valid, the Commission order directing the licensee to provide information may encompass proprietary information or Safeguards Information. Michael Spencer from OGC replied that the procedures did not explicitly account for this, but it was something worth considering.
- Stephen Burdick from Morgan Lewis expressed concern about a lack of margin in the hearing schedule for unexpected delays and said that consideration should be given to further compressing the hearing schedule. He also asked whether consideration was given to other hearing formats, such as the uncontested hearing format used in combined license proceedings. Michael Spencer and Jody Martin from OGC replied that thought was given to the use of other hearing formats, but the Subpart L approach seemed best. They replied that an uncontested hearing is unlike an ITAAC hearing in a number of ways, and the uncontested hearing format is useful for addressing a wide range of issues in lesser detail while the Subpart L approach is useful for addressing a narrow range of issues in depth. In addition, if less detail is provided up front in the form of testimony, that might require more time later for questions and answers. In this regard, a Subpart L hearing normally involves one round of questioning orally at the hearing while uncontested hearings in the current format have employed three rounds of questions.
- Steven Sondheim from the Sierra Club asked whether the NRC performed an analysis of the problems that could happen at implementation, and Michael Spencer from OGC replied that potential implementation difficulties were considered as part of developing the procedures. Mr. Sondheim also asked whether the procedures cover onsite storage

of high burn-up fuel. Earl Libby from the Office of New Reactors replied that high burn-up fuel is an issue arising a number of years into the operational period, and that research on this topic is ongoing but not part of the ITAAC hearing procedures.

- Just before the end of the meeting, Michael Spencer from OGC raised a number of topics that the NRC was particularly interested in receiving public input on but which had not been discussed at the meeting. These included (1) the possibility of issuing the notice of intended operation earlier than 210 days before scheduled fuel load; (2) the considerations to be used in choosing between the "Track 1" and "Track 2" procedures in a particular proceeding; (3) the time that should be given for filing hearing requests, intervention petitions, new or amended contentions, and claims of incompleteness after the deadline and the time that should be given for answering these filings; (4) to what extent should interlocutory appeals and reconsideration be allowed; and (5) the process for making the interim operation determination.

Attachments: 1. List of Attendees
2. Meeting Agenda

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DISTRIBUTION:

PUBLIC

PMoulding

Attendees List

ADAMS ACCESSION NO.: ML14153A433

*concurring via email

OFFICE	OGC/NRP
NAME	MASpencer
DATE	06/02/2014

OFFICIAL RECORD COPY

LIST OF ATTENDEES**Meeting Regarding Proposed ITAAC Hearing Procedures**

Wednesday, May 21, 2014

<u>NAME</u>	<u>ORGANIZATION</u>
Mike Blake (by phone)	Nuclear News
Bill Freebairn (by phone)	Platts
Steven Hamrick (by phone)	Florida Power and Light
Michael Keegan (by phone)	Don't Waste Michigan
Richard Orthen (by phone)	Florida Power and Light
Bill Raymond (by phone)	NRC/NRO
Steven Sondheim (by phone)	Sierra Club
Michael Spencer	NRC/OGC
Jody Martin	NRC/OGC
Earl Libby	NRC/NRO
Paolo Albuquerque	Southern Nuclear Company
Millicent Ronnlund	Balch & Bingham
Russ Bell	Nuclear Energy Institute
Brian Meadors	Southern Nuclear Company
Stephen Burdick	Morgan Lewis
Darani Reddick	Winston & Strawn
Emily Krause	NRC/OCAA
Sheila Ray	NRC/NRR
Steven Bloom	NRC/NRO
Anne Cottingham	Nuclear Energy Institute
Peter LeJeune	Balch & Bingham
Anthony Bowers	NRC/NSIR
Ryder Thompson	SCANA
Al Bynum	SCANA
Peter LeRoy	Chicago Bridge & Iron
Jason Zorn	Westinghouse
Elva Bowden Berry	NRC/OGC

List of Abbreviations:

NRO Office of New Reactors
 NRR Office of Nuclear Reactor Regulation
 NSIR Office of Nuclear Security and Incident Response
 OCAA Office of Commission Appellate Adjudication
 OGC Office of the General Counsel

AGENDA

PUBLIC MEETING – PROPOSED ITAAC HEARING PROCEDURES

MAY 21, 2014; 1:30 PM – 5:30 PM

LOCATION: NRC HQ – TWO WHITE FLINT NORTH AUDITORIUM

Time

1:30 PM	Welcome/Introductions
1:35 PM	Background on ITAAC Hearing Procedures
2:20 PM	Questions and Discussion
2:50 PM	Break
3:00 PM	Questions and Discussion (<i>CONTINUED</i>)
4:10 PM	Break
4:20 PM	Questions and Discussion (<i>CONTINUED</i>)
5:25 PM	Closing