Mendiola, Doris

Subject: FW: NND-14-0386
Attachments: NND-14-0386.pdf

4/18/2014

79FR 21958

(5)

From: LONG, JILLIAN L [mailto:JILLIAN.LONG@scana.com]
Sent: Thursday, July 03, 2014 9:14 AM
To: Bladey, Cindy
Cc: McGovern, Denise; Reece, James; Jackson, Rahsean
Subject: NND-14-0386

Docket ID NRC-2014-0077 Comments on the Proposed Procedures for Conducting Hearings on Whether Acceptance Criteria in Combined Licenses Are Met, 79 Fed. Reg. 21,958

Jillian Long
Admin Assistant, ITAAC
New Nuclear Deployment
SCE&G | V.C. Summer Nuclear Station
803.931.5452 (Office)

SUNSI Review Complete
Template = ADM – 013
E-RIDS= ADM-03
Add–
M. Spencer (mxs8)

SCE&G®
A SCANA COMPANY

April R. Rice
Manager
New Nuclear Licensing

July 2, 2014
NND-14-0386

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

Subject: **Docket ID NRC-2014-0077**
Comments on the Proposed Procedures for Conducting Hearings on Whether Acceptance Criteria in Combined Licenses Are Met, 79 Fed. Reg. 21,958

On April 18, 2014, the U.S. Nuclear Regulatory Commission (NRC) staff published in the *Federal Register* (79 Fed. Reg. 21,958) "Proposed Procedures for Conducting Hearings on Whether Acceptance Criteria in Combined Licenses Are Met." These proposed procedures relate to the conduct of hearings related to the inspections, tests, analyses, and acceptance criteria (ITAAC) specified in combined licenses issued under 10 CFR Part 52. Such hearings are permitted by Section 189 of the Atomic Energy Act of 1954, as amended, and NRC regulations at 10 CFR 52.103. The NRC staff requested comments on the proposed ITAAC hearing procedures by July 2, 2014.

South Carolina Electric & Gas Co. (SCE&G) respectfully submits these comments on the proposed ITAAC hearing procedures. SCE&G is the holder of the combined licenses for Virgil C. Summer Nuclear Station, Units 2 and 3, two AP1000 reactors under construction near Jenkinsville, South Carolina. Therefore, SCE&G has an important interest in the development of the ITAAC hearing procedures.

SCE&G fully supports the NRC's preparation of the ITAAC hearing procedures at this time, as process predictability is important to all stakeholders—including not only the licensee, but also the NRC and members of the public. SCE&G recognizes the tremendous effort and thought expended by the NRC staff, the Office of the General Counsel, and the Office of Commission Appellate Adjudication in developing the procedures. It thanks the NRC staff for holding the May 21, 2014 public meeting to discuss the procedures and for the opportunity to submit these comments.

SCE&G supports many aspects of the proposed procedures. In particular, SCE&G agrees with efforts "to expedite the ITAAC hearing process" and "to eliminate procedures from the hearing process that are time-consuming, resource-intensive, and unnecessary under the

particular circumstances of an ITAAC proceeding." 79 Fed. Reg. at 21,963-964. The attached comments respond to the various topics identified by the NRC staff for comment. SCE&G's other comments are intended to provide added certainty for the completion of any ITAAC hearings in a timely fashion and prior to scheduled fuel load and with the goal of improving the predictability and certainty of the procedures. Upon review of these comments, SCE&G urges the NRC staff to expeditiously revise the procedures accordingly and send them to the Commission for consideration.

Should you need additional information or have questions about SCE&G's comments, please contact Mr. Ryder Thompson, Supervisor, ITAAC, by telephone at (803) 941-9812, or by email at ryder.thompson@scana.com.

Sincerely,

Ryder Thompson for April Rice

April R. Rice
Manager, Nuclear Licensing
New Nuclear Deployment

Enclosure: (1) SCE&G Comments on Proposed ITAAC Hearing Procedures

c: Cindy Bladey - NRC
Marion Cherry - Santee Cooper
Stephen A. Byrne –SCE&G
Jeffrey B. Archie –SCE&G
Ronald A. Jones –SCE&G
Alan Torres – SCE&G
Ken Hollenbach - CB&I Stone & Webster
Joel Hjelseth – Westinghouse
Daniel Churchman – Westinghouse
Christopher Levesque - Westinghouse
Brian McIntyre – Westinghouse
Tom Geer – Westinghouse
Michael Frankle – Westinghouse
Brian Bedford-Westinghouse
Alvis J. Bynum –SCE&G
Kathryn M. Sutton – Morgan Lewis
Stephen Burdick – Morgan Lewis
Chuck Baucom - CB&I Stone & Webster
AJ Marciano – CB&I Stone & Webster
Sean Burk - CB&I Stone & Webster
Denise McGovern
Document Control Desk
Unit 1 NRC Resident Inspector
Unit 2/3 NRC Resident Inspector
Ryder Thompson – SCE&G
VCSummer2&3ProjectMail@cbi.com
vcsummer2&3project@westinghouse.com
DCRM-EDMS@SCANA.COM
VCSNNDCorrespondence@scana.com

SCE&G Comments on Proposed ITAAC Hearing Procedures

I. INTRODUCTION AND BACKGROUND

As required by Section 185b. of the Atomic Energy Act of 1954, as amended (AEA), any combined license (COL) issued by the U.S. Nuclear Regulatory Commission (NRC) shall identify "the inspections, tests, and analyses . . . that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of this Act, and the Commission's rules and regulations." AEA Section 189a.(1)(B) provides an opportunity for persons whose interest may be affected by operation of a new plant to "request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license."

The AEA and NRC regulations, primarily in 10 CFR Parts 2 and 52, impose some requirements related to this hearing opportunity and any resulting hearing, but do not fully describe this process. In a July 19, 2013 Staff Requirements Memorandum (SRM) on SECY-13-0033, the Commission recognized "the lack of clarity regarding processes for ITAAC hearings" and directed the NRC staff, the Office of the General Counsel, and the Office of Commission Appellate Adjudication (referred to jointly as "the staff") to "develop a range of options for ITAAC hearing formats for Commission review and approval." The Commission directed the staff to develop, deliberate, and resolve procedures related to the conduct of ITAAC hearings within the next 12 to 18 months.

On April 18, 2014, in response to the SRM, the NRC staff published in the *Federal Register* (79 Fed. Reg. 21,958) "Proposed Procedures for Conducting Hearings on Whether Acceptance Criteria in Combined Licenses Are Met." These proposed procedures relate to the conduct of hearings regarding inspections, tests, analyses, and acceptance criteria (ITAAC).

The *Federal Register* notice itself provides a detailed discussion of many of the procedures that the staff proposes to be used to conduct activities related to an ITAAC hearing. That notice also refers to four draft templates prepared by the staff:

- Draft Template A, "Notice of Intended Operation and Associated Orders"
- Draft Template B, "Procedures for Hearings Involving Testimony"
- Draft Template C, "Procedures for Hearings Not Involving Testimony"
- Draft Template D, "Procedures for Resolving Claims of Incompleteness"

South Carolina Electric & Gas Co. (SCE&G) appreciates the opportunity to provide these comments on the proposed procedures in both the *Federal Register* notice and the four draft templates (referred to collectively as the "procedures"). SCE&G's comments are organized as follows:

- Section II provides a high-level summary of SCE&G's principal comments.
- Section III provides detailed comments. Section III.A specifically addresses each of the topics for which the proposed procedures requested comments. These requests are found in the *Federal Register* notice and in the four referenced draft templates (Draft Templates A through D). The order of these comments generally follows the order in which the corresponding requests are made in first the *Federal Register* notice and then in the draft templates.
- Section III.B provides SCE&G's remaining comments beyond those topics specifically identified by the staff. The order of these comments generally follows the order in which these topics may arise during the ITAAC hearing process.
- Additionally, SCE&G has reviewed the comments from the Nuclear Energy Institute (NEI) on the proposed ITAAC hearing procedures and endorses them.

II. SUMMARY OF PRINCIPAL COMMENTS

SCE&G supports many aspects of the proposed procedures. Many of the following comments respond to the various topics identified by the NRC staff. SCE&G's comments generally are intended to provide added certainty for the completion of any ITAAC hearings in a timely fashion and prior to scheduled fuel load and with the goal of improving the predictability and certainty of the ITAAC hearing procedures. Similar to the staff's focus, these comments are intended to support ITAAC hearing procedures "with an eye toward the overarching statutory requirements for the expeditious completion of an ITAAC hearing found in AEA § 189a.(1)(B)(v)." 79 Fed. Reg. at 21,961. SCE&G summarizes its principal comments as follows.

- *Regarding the timing of fuel load:*
    - The proposed procedures state that "a contraction of the initial fuel load schedule after issuance of the notice of intended operation is contrary to the intent of the AEA." 79 Fed. Reg. at 21,963 n.10. That is incorrect and should be deleted or clarified in the procedures. The AEA does not impose any requirements with respect to notifications of scheduled fuel load or updates to that schedule, much less state that any contraction of that schedule is not permitted. (*see* Section III.B.1)
- *To provide additional margin in the schedule to reduce the potential for impact of any ITAAC hearing activities on fuel load, the ITAAC hearing procedures should:*

- allow for early voluntary submission of the Uncompleted ITAAC Notification required by 10 CFR 52.99(c)(3) and a corresponding early publication of the Notice of Intended Operation under 10 CFR 52.103(a) (*see* Section III.A.1)

- allow for pre-filed rebuttal testimony for all hearings with pre-filed testimony, but should shorten the time for submitting the rebuttal testimony to 7 days after initial testimony (*see* Section III.A.9)

- provide for a hearing process similar to that in 10 CFR Subpart N under certain circumstances, which would dispense with any pre-filed testimony and would proceed directly to the oral hearing (*see* Section III.B.2)

- shorten some of the key timeframes to allow for more certainty that the ITAAC hearing will be completed before scheduled fuel load (*see* Section III.B.2)

- require the NRC to publish the pre-clearance notice for access to safeguards information (SGI) earlier, given the possible early voluntary submission of the Uncompleted ITAAC Notification required by 10 CFR 52.99(c)(3) (*see* Section III.B.3)

- clarify the standards and timing for licensee hearing requests (*see* Section III.B.6)

- *To minimize the impact of hearing activities on the overall hearing schedule, including activities that could take place close to scheduled fuel load, the ITAAC hearing procedures should:*

  - require that any filings after the initial deadline (including late hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness) be made within 10 days after new information is available; a response should be made 7 days after such a filing (*see* Section III.A.2)

  - require a showing of unavoidable and extreme circumstances for all extension requests, no matter how minor (*see* Section III.A.4)

  - include both an event-based trigger and a deadline-based trigger to satisfy the good cause requirements for extension requests, and should require the movant to submit the motion by the earlier of the two deadlines (*see* Section III.A.5)

  - not allow interlocutory review of licensing board decisions, other than on requests for access to sensitive unclassified non-safeguards information (SUNSI) or SGI (*see* Section III.A.8)

  - state that anyone who plans to submit a hearing request should provide notice to the NRC staff and licensee within 30 days after publication of the Notice of Intended Operation (*see* Section III.B.4)

- limit claims of incompleteness by clarifying the standards for these claims and by specifying the timing of such claims (*see* Section III.B.7)
- narrow the ability and timing for submitting hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed after the original deadline (*see* Section III.B.8)
- not allow late requests for SUNSI/SGI (*see* Section III.B.9)
- discuss the option of bifurcation of a decision on a hearing request (*see* Section III.B.10)
- state that only written limited appearance statements are permitted, in order to avoid prolongation of the oral hearing (*see* Section III.B.19)
- prohibit any requests for stays (*see* Section III.B.21)

- *Regarding interim operation, the ITAAC hearing procedures should:*
  - provide for a decision on interim operation as soon as possible, preferably in a decision ruling on a hearing request (*see* Section III.B.11.a)
  - not require additional briefing related to mitigation to support interim operation (*see* Section III.B.11.b)
  - clarify the standard and should not limit the Commission's decision on interim operation (*see* Section III.B.11.c)
  - clarify the relationship between interim operation under 10 CFR 52.103(c) and a decision that all acceptance criteria have been met under 10 CFR 52.103(g) (*see* Section III.B.11.d)

- *To clarify other aspects of the ITAAC hearing process, the ITAAC hearing procedures should:*
  - not eliminate the need to address the standards for a motion to reopen once the record of the proceeding has been closed (*see* Section III.A.3)
  - allow motions for reconsideration, and should clearly state that the existence of a pending motion for reconsideration will not prevent any further actions by the NRC (*see* Section III.A.6)
  - state that the presiding officer for rulings on requests for review of NRC staff access determinations is the presiding officer responsible for the proceeding at the time of the request for review (*see* Section III.A.7)

- allow proposed findings of fact and conclusions of law unless the presiding officer, on its own motion or upon a joint agreement of all the parties, dispenses with proposed findings on some or all of the hearing issues (*see* Section III.A.10)

- acknowledge the Administrative Procedures Act exception (5 U.S.C. § 554(a)(3)) to the hearing requirement for adjudications that involve "proceedings in which decisions rest solely on inspections, tests, or elections," and provide greater guidance on when this exception will be applied to contentions related to ITAAC (*see* Section III.B.5)

- specify the presiding officer for ITAAC hearings (*see* Section III.B.12)

- broadly define legal contentions to include any contention that does not involve a dispute of fact (*see* Section III.B.13)

- change the notification period from the same day to the next business day, to allow legal counsel time to make the requisite filing and explain the effect on the proceeding (*see* Section III.B.14)

- limit discovery related to any admitted contention (*see* Section III.B.15)

- include a protective order template that could be implemented quickly if any contentions are admitted for hearing that may require disclosure of proprietary information (*see* Section III.B.16)

- clarify that there is no prohibition on participants raising evidentiary objections at the hearing or in any rebuttal testimony (*see* Section III.B.17)

- acknowledge the possibility of the oral hearing lasting more than one day (*see* Section III.B.18)

- allow for the written statements of position to be filed in the form of proposed findings of fact or conclusions of law, but this should not factor into any decision about the need for post-hearing findings of fact and conclusions of law (*see* Section III.B.20)

III. DETAILED COMMENTS ON PROPOSED ITAAC HEARING PROCEDURES

This section provides SCE&G's detailed comments on the proposed ITAAC hearing procedures. Section A below provides comments on the specific topics identified by the NRC staff for comment in the proposed procedures, including the *Federal Register* notice and the four draft templates. Section B below provides comments on additional topics identified by SCE&G.

A. Comments on Specific Topics Identified by the NRC Staff

1. Early Submission of 225-day Uncompleted ITAAC Notification

NRC regulations state that a licensee must submit its Uncompleted ITAAC Notification (UIN), no later than the date 225 days before the scheduled date for initial loading of fuel, for all ITAAC for which the licensee has not yet provided an ITAAC closure notification (ICN). The UIN must provide sufficient information to demonstrate that the prescribed inspections, tests, or analyses will be performed and the prescribed acceptance criteria will be met for those uncompleted ITAAC. 10 CFR 52.99(c)(3). The NRC staff has requested comments on the pros and cons of early voluntary submission of the UIN (*i.e.*, earlier than 225 days before the scheduled date for initial loading of fuel) and how early the NRC might reasonably issue the Notice of Intended Operation under 10 CFR 52.103(a). 79 Fed. Reg. at 21,964.

SCE&G agrees that the ITAAC hearing procedures should allow for early voluntary submission of the UIN by a licensee. Early submission of the UIN already is permitted by 10 CFR 52.99(c)(3), which states that the UIN "must be provided *no later* than the date 225 days before the scheduled date for initial loading of fuel." (Emphasis added). Consistent with that regulation, early submission of the UIN should be expressly offered as an option in the procedures.

The "pros" of early submission of the UIN are significant. The proposed procedures assume that the staff will issue the Notice of Intended Operation 210 days before scheduled fuel load if the UIN is submitted by a licensee 225 days before scheduled fuel load. 79 Fed. Reg. at 21,964. Assuming a hearing is granted that utilizes the Track 1 schedule, the hearing would take the full 210 days before issuance of an Initial Decision. 79 Fed. Reg. at 21,963, 21,971. This would not allow for any delays in schedule and would provide no time between the Initial Decision and scheduled fuel load. If a licensee submits the UIN prior to the 225 day deadline, and if the staff issues the Notice of Intended Operation prior to the 210 day goal, then the voluntary early submission would provide the benefit of additional margin to complete a timely ITAAC hearing. In addition, early voluntary submission of the UIN, and the corresponding early publication of the Notice of Intended Operation, would have no impact on participants' rights as part of an ITAAC hearing.

Any possible "cons" of early submission are manageable. For example, the UIN would need to address additional uncompleted ITAAC, but 10 CFR 52.99(c)(3) requires that the UIN demonstrate how the uncompleted ITAAC will be completed. Additionally, there is a potential that subsequent ICNs for uncompleted ITAAC could provide opportunities for hearing requests/late contentions based on new information, but that risk exists anyway and early submission of the UIN actually would provide earlier access to the ITAAC closure plans. Finally, there is a risk that any hearing may simply expand to fill the additional time, but participants should be able to address that concern with the target dates in the procedures and the fact that the Initial Decision will have a "strict deadline." 79 Fed. Reg. at 21,964.

If licensees submit UINs early, then early issuance of the Notice of Intended Operation under 10 CFR 52.103(a) becomes essential. If this does not occur, then there is no benefit to

submitting the UIN early. The staff should issue the Notice of Intended Operation expeditiously after a UIN. The issuance of the Notice of Intended Operation should be moved earlier in the schedule by an amount of time at least equal to the amount of time that the licensee submitted the UIN early.

The exact timing of early submission of the UIN should be left to the discretion of individual licensees, but it would be reasonable for a licensee to voluntarily submit the UIN a few months or more prior to the 225 day deadline set forth in NRC regulations. A few months would provide the additional margin for timely completion of an ITAAC hearing that is discussed above.

2. Timing of Filings After Initial Deadline

The proposed procedures acknowledge the possibility of hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed after the original deadline specified in the Notice of Intended Operation. Such filings after the initial deadline would need to demonstrate good cause as defined by 10 CFR 2.309(c), including the Section 2.309(c)(1)(iii) requirement that the filing be made in a timely fashion based on the availability of new information. 79 Fed. Reg. at 21,966-967.

The NRC staff has requested comments on three options regarding the timing of these filings after the initial deadline: (1) The petitioner would be given 30 days from the new information to make its filing and the other parties have 25 days to answer; (2) the petitioner would be given 20 days from the new information to make its filing and the other parties have 15 days to answer; or (3) the petitioner would be given [some period between 20 and 30 days] from the new information to make its filing and the other parties have [some period between 15 and 25 days] to answer. 79 Fed. Reg. at 21,967-968; Draft Template A at 30-31; Draft Template B at 26-27, 29.

After considering the benefits and challenges with these options, SCE&G concludes that the staff should specify a deadline for these late filings that is shorter than any of the three proposed options. SCE&G concludes that a reasonable and appropriate deadline to make a filing should be 10 days after new information. A response should be 7 days after such a filing. These deadlines should provide sufficient time to prepare and make the filings, given the narrow focus of the ITAAC hearing and the late filings. A filing after the initial deadline would be based on very specific new information, and as such should not require significant time or effort to prepare and submit. This 10-day time period is further supported by the overall need to complete an ITAAC hearing in a timely manner and prior to scheduled fuel load (as required by AEA Section 189a.(1)(B)(v) "to the maximum possible extent").

3. Motion to Reopen

In NRC adjudicatory proceedings, if the record of the proceeding has been closed (*e.g.*, the only hearing request has been rejected), then a petitioner must submit a motion to reopen the record for consideration of additional evidence. The motion to reopen requirement applies to circumstances in which a petitioner is seeking to file a new petition or seeking to submit new or

amended contentions.[1] Pursuant to 10 CFR 2.326, a motion to reopen will not be granted unless: (1) the motion is timely (an exceptionally grave issue may be considered in the discretion of the presiding officer); (2) the motion must address a significant safety or environmental issue; and (3) the motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially. The motion must satisfy additional requirements set forth in Section 2.326, including submission of an accompanying affidavit setting forth the factual and/or technical bases for the movant's claims.

The NRC staff has requested comments on two options regarding whether to eliminate the need to address the standards for a motion to reopen in an ITAAC hearing request, intervention petition, or motion for leave to file a new or amended contention filed after the original deadline. Under Option 1, the NRC's existing rule in 10 CFR 2.326 would apply the reopening standards to any motion or intervention petition in an ITAAC hearing when the record is closed. Under Option 2, motions to reopen the record would be entertained only with respect to the submission of new information related to a previously-admitted contention, in which case the 10 CFR 2.326 standards would apply; a motion to reopen would not be required for a hearing request, intervention petition, or motion for leave to file a new or amended contention filed after the original deadline because (according to the staff) the purposes served by the reopening provisions would be addressed by the requirements applying to hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the original deadline. 79 Fed. Reg. at 21,967; Draft Template A at 32-33; Draft Template B at 35.

SCE&G believes that the NRC staff should choose Option 1 and should not eliminate the need to address the standards for a motion to reopen once the record of the proceeding has been closed. A high standard for reopening the record should be retained because the record has been closed and such requests present the potential for delay in fuel load. After all, reopening becomes an issue only after interested stakeholders already have had a full opportunity to bring their issues forward.

Although there may be some similarities in the standards for reopening the record and other standards that would apply in parallel with a motion to reopen (*e.g.*, new and amended contention standards), there are important differences under certain circumstances. For example, the third criterion in 10 CFR 2.326(a) for motions to reopen requires that there be a materially different "result . . . had the newly proffered evidence been considered initially." This standard is not fully addressed by other standards. Additionally, other 10 CFR 2.326 standards, such as the paragraph (b) requirement that the motion be accompanied by affidavits, would not necessarily be addressed by other standards. Finally, existing NRC case law and other guidance

---

[1] *See, e.g.*, *Dominion Nuclear Conn., Inc.* (Millstone Power Station, Unit 3), CLI-09-5, 69 NRC 115, 120 (2009) (holding that, when the Board has "already denied the intervention petition, a motion to file new or amended contentions must address the motion to reopen standards") (internal quotations omitted); *see also Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-06-4, 63 NRC 32, 37 (2006) (applying reopening factors to new contentions filed after petition to intervene had been denied); *Tex. Utils. Elec. Co.* (Comanche Peak Steam Elec. Station, Units 1 & 2), CLI-92-1, 35 NRC 1, 3, 7 (1992) (applying reopening factors to new contentions filed after adjudicatory proceedings dismissed pursuant to settlement).

already addresses the motion for reopening standard and should apply to such circumstances in an ITAAC hearing.[2]

Furthermore, to the extent that there is some overlap between the different standards, eliminating the motion for reopening standards would not provide any significant benefits in efficiency. For the parts of the standards that overlap, a movant could simply cross-reference the information it provides to attempt to satisfy the standards. The movant, however, still would need to provide the additional information to satisfy the standards that do not overlap.

4. Extension Requests – Very Minor Extensions

The proposed procedures would allow motions for extension of time, but they would need to demonstrate good cause for the requested extension. 79 Fed. Reg. at 21,968. Given the need for timely completion of any ITAAC hearing, the procedures propose that good cause would require a showing of "unavoidable and extreme circumstances" for all but "very minor extensions." 79 Fed. Reg. at 21,968. The NRC staff has requested comments on whether "very minor extensions" should be defined in a more objective manner, or whether a showing of unavoidable and extreme circumstances should be required for all extension requests, no matter how minor. 79 Fed. Reg. at 21,968; *see also* Draft Template A at 25; Draft Template B at 8.

A showing of unavoidable and extreme circumstances should be required for all extension requests, no matter how minor. This is imperative, given the extremely tight schedule for completing a potential ITAAC hearing prior to scheduled fuel load (as required by AEA Section 189a.(1)(B)(v) "to the maximum possible extent"). Additionally, creating two standards for extension requests adds further unnecessary complexity to the hearing process. If the staff retains the "very minor extensions" standard, then it should be defined in a more objective manner as an extension of 1 to 2 days maximum.

5. Extension Requests – Deadline-Based Trigger

The proposed procedures state that motions for extension of time shall be filed "as soon as possible, and, absent exceptional circumstances, motions for extension of time will not be entertained if they are filed more than two business days after the moving party discovers the event that gives rise to the motion." 79 Fed. Reg. at 21,968. The staff chose an event-based trigger for extension requests given that meritorious extension requests likely will be based on events outside the party's control. The NRC staff has requested comments on whether a deadline-based trigger (*e.g.*, "motions for extension of time shall be filed as soon as possible, but no later than 3 days before the deadline") should be used in lieu of, or in combination with, an event-based trigger. 79 Fed. Reg. at 21,968; *see also* Draft Template A at 25; Draft Template B at 7-8.

---

[2] For example, the Commission emphasized "the heavy burden involved" and characterized these requirements as "high" and "stringent." Final Rule, Criteria for Reopening Records in Formal Licensing Proceedings, 51 Fed. Reg. 19,535, 19,538 (May 30, 1986).

The procedures should include both an event-based trigger and a deadline-based trigger to satisfy the good cause requirements for extension requests, and should require the movant to submit the motion by the earlier of the two deadlines. Given the need to complete ITAAC hearings in an expeditious manner, the event-based trigger is important to ensure that any extension requests are raised as early as possible. The use of a deadline-based trigger, however, is beneficial under those circumstances in which the event giving rise to the need for the extension does not have a clear origin.

6. Motions for Reconsideration

In NRC adjudicatory proceedings, a participant may submit a motion for reconsideration to request that a presiding officer reconsider a decision. Under 10 CFR 2.323(e), a motion for reconsideration may not be filed except upon leave of the presiding officer, and upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid.

The NRC staff has requested comments on three options with respect to motions for reconsideration. In Option 1, the 10 CFR 2.323(e) provisions for motions for reconsideration would be retained with the only modification being a reduced filing period. Option 2 would restrict motions for reconsideration to a presiding officer's Initial Decision and Commission decisions on appeal of a presiding officer's Initial Decision. Option 3 would prohibit motions for reconsideration. 79 Fed. Reg. at 21,968; Draft Template A at 25-27; Draft Template B at 9-10.

The NRC staff should select Option 1. As the staff stated in the proposed procedures, "[t]he rationale for this option is that it may be premature, given the NRC's lack of experience with ITAAC hearings, to limit the opportunity to seek reconsideration." 79 Fed. Reg. at 21,968. Given the first-of-a-kind nature of the initial ITAAC hearings, a motion for reconsideration may provide an important vehicle to try to correct misunderstandings or potential errors in decisions. Additionally, because motions for reconsideration are uncommon and must satisfy a very high standard to be granted, they should not have a significant impact on the ITAAC hearings. The procedures, however, should clearly state that the existence of a pending motion for reconsideration will not prevent any further actions by the NRC. This means that the proceeding should continue moving forward despite the pendency of a motion for reconsideration. As a result, there should be no impact on schedule. In this regard, the proposed procedures state that "reconsideration of these decisions does not prevent them from taking effect." 79 Fed. Reg. at 21,968. Option 2 should not be selected because it may limit reconsideration motions too far. Given the unique nature of these hearings, other decisions may arise that need reconsideration. Without any experience with ITAAC hearings, it is too early to know whether these other circumstances will arise. Additionally, because we recommend below to not allow interlocutory review, retaining motions for reconsideration provides some balance in adjudicatory options.

7. Presiding Officer for Review of SUNSI-SGI Access Determinations

The proposed procedures will include an order (SUNSI-SGI Access Order) imposing procedures for requesting access to sensitive unclassified non-safeguards information (SUNSI) and safeguards information (SGI) for the purposes of contention formulation. 79 Fed. Reg. at

21,965. That order would be issued with the Notice of Intended Operation. The NRC staff has requested comments on which body should be the presiding officer for rulings on requests for review of NRC staff access determinations under the SUNSI-SGI Access Order. 79 Fed. Reg. at 21,969; Draft Template A at 33-34, 45-47; Draft Template B at 18 n.13. It also requested comments on which body should receive motions for Protective Orders or draft Non-Disclosure Affidavits or Agreements for SUNSI/SGI. Draft Template A at 44.

The presiding officer for rulings on requests for review of NRC staff access determinations should be the presiding officer responsible for the proceeding at the time of the request for review. Because the Commission would be the presiding officer with respect to ruling on hearing requests, it also should be the presiding officer for rulings on requests for review of access determinations submitted during that timeframe. After a hearing request is granted, and until the Initial Decision is issued, the presiding officer for requests for review should be the presiding officer responsible for any hearing. Having the same presiding officer for requests for review will result in efficiencies because that presiding officer will be the most familiar with the current status of the proceeding. This same designation of responsibility should apply for motions for Protective Orders or draft Non-Disclosure Affidavits or Agreements for SUNSI/SGI.

8. Interlocutory Review

NRC regulations, 10 CFR 2.341(f)(2), allow the Commission, in its discretion, to grant interlocutory review at the request of a party. The petition for interlocutory review will be granted only if the party demonstrates that the issue for which the party seeks interlocutory review: (1) threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision, or (2) affects the basic structure of the proceeding in a pervasive or unusual manner.

The NRC staff has requested comments on two options under consideration with respect to whether, and to what extent, there should be an additional opportunity to petition for interlocutory review. Under Option 1, no requests for interlocutory review of licensing board decisions would be entertained, other than on requests for access to SUNSI or SGI. The rationale for this option is that interlocutory review of decisions, other than on requests for access to SUNSI or SGI, is unnecessary and unproductive given the expedited nature of the proceeding. Under Option 2, the interlocutory review provisions of 10 CFR 2.341(f) would be retained without modification. 79 Fed. Reg. at 21,970; Draft Template A at 34; Draft Template B at 38-39.

The NRC staff should select Option 1. Interlocutory review would be unnecessary and unproductive in an ITAAC hearing in view of the expedited nature of the proceeding. Additionally, there is no need for interlocutory review of certain decisions (*e.g.*, rulings on hearing requests and late-filed contentions), given that the Commission will be the presiding officer for those decisions. Similarly, interlocutory review also would be unnecessary should the Commission be the presiding officer for any ITAAC hearing.

9. Rebuttal Testimony

Except for legal contentions, the proposed procedures would utilize a Subpart L-type approach to evidentiary hearings on admitted contentions that features pre-filed written testimony, an oral hearing, and questioning by the presiding officer. The procedures would allow for two hearing tracks; one with pre-filed rebuttal testimony, and one without. The Commission would select which track is to be used for the hearing. 79 Fed. Reg. at 21,970. The NRC staff has requested comments on factors the Commission should consider in choosing between Track 1 (includes pre-filed rebuttal testimony) and Track 2 (no pre-filed rebuttal testimony) in an individual proceeding. 79 Fed. Reg. at 21,970; *see also* Draft Template B at 5-6.

If the Subpart L-type approach is retained, then the procedures should allow for pre-filed rebuttal testimony for all hearings (*i.e.*, Track 1 should be the only option allowed for hearings with pre-filed testimony). However, the procedures should reduce the time for submitting the rebuttal testimony from 15 days after the initial testimony to 7 days. Given the narrow scope of rebuttal testimony, 7 days is sufficient, and should help ensure that the hearing is completed prior to scheduled fuel load (as required by AEA Section 189a.(1)(B)(v) "to the maximum possible extent").

Rebuttal testimony is the only way to ensure that the participants have a complete opportunity to respond to new, unexpected issues that are raised in initial testimony by other participants. It is not possible for the Commission to know ahead of time whether such issues will be raised in initial testimony, and so it would not be possible to identify good criteria for choosing between Track 1 and Track 2. Having to make a decision on the need for rebuttal testimony also adds some uncertainty and unnecessary complexity to the hearing process. Rebuttal testimony has additional potential benefits, including: clarifying the evidentiary record; assisting the presiding officer with expeditiously reaching necessary findings, because topics raised in initial testimony are more likely to have been fully addressed; and clarifying issues for the oral hearing, which should make the hearing more focused, efficient, and less time consuming.

10. Proposed Findings of Fact and Conclusions of Law

Under Subpart L procedures, 10 CFR 2.1209, parties must file written post-hearing proposed findings of fact and conclusions of law ("proposed findings") on contentions addressed at a hearing. These proposed findings of fact and conclusions of law allow the parties to provide the presiding officer with their full analysis of the hearing issues, including analysis of relevant law, pre-filed testimony, and testimony at an oral hearing.

The NRC staff has requested comments on two options with respect to proposed findings. Option 1 would allow such proposed findings unless the presiding officer, on its own motion or upon a joint agreement of all the parties, dispenses with proposed findings on some or all of the hearing issues. Option 2 would not permit proposed findings unless the presiding officer determines that they are necessary. Under Option 2, the presiding officer may limit the scope of proposed findings to certain specified issues. 79 Fed. Reg. at 21,972; Draft Template B at 36.

If the Subpart L-type approach is retained, then the NRC staff should select Option 1. The proposed findings would provide benefit in that they would not only present the participants' respective positions on the issues at hearing, but also tie those positions to the hearing record. The proposed findings would not have any impact on the schedule given that the procedures tie the Initial Decision to the oral hearing date—not to the due date for submission of the proposed findings. Moreover, Option 1 also would allow the presiding officer to dispense with the proposed findings if the factual circumstances show that they are unnecessary

B. Additional Comments

1. Fuel Load Date

The proposed procedures state:

> A licensee is required by 10 CFR 52.103(a) to notify the NRC of its scheduled date for initial fuel load no later than 270 days before the scheduled date and to update its schedule every 30 days thereafter. Thus, a licensee might, in a schedule update after the issuance of the notice of intended operation, attempt to move its scheduled fuel load date to an earlier time. However, *a contraction of the initial fuel load schedule after issuance of the notice of intended operation is contrary to the intent of the AEA.* The AEA contemplates that the hearing process will be triggered, and the schedule will in part be determined, by issuance of the notice of intended operation, the timing of which is based on the fuel load schedule that the licensee provides to the NRC before the issuance of the notice of intended operation. 79 Fed. Reg. at 21,963 n.10 (emphasis added).

The staff's statement that a contraction of the initial fuel load schedule after issuance of the Notice of Intended Operation would be contrary to the AEA is incorrect and should be deleted or clarified in the procedures. The AEA does not impose any requirements with respect to notifications of scheduled fuel load or updates to that schedule, much less state that any contraction of that schedule is not permitted. Although the AEA provides for other deadlines that are linked to the date of scheduled fuel load, there is no indication that that date is unmovable. Indeed, the AEA refers to this date as a *scheduled date* or an *anticipated date*, which by definition would be expected to change. *See* AEA Section 189a.(1)(B). Even 10 CFR 52.103(a) requires updates to the scheduled fuel load date, which again by definition indicates the possibility that the date could move. Otherwise, there would be no need for updates. There is no indication that the schedule could only be extended, but not contracted.

Licensees will attempt to provide the best available scheduled date for initial fuel load, but it will not be possible to perfectly predict that date 270 days before it happens. If licensees are able to satisfy all requirements prior to the scheduled date of fuel load, then they should be able to proceed to fuel load early. Waiting for fuel load would impose substantial economic costs on licensees and is unnecessary to protect the rights of intervenors.

If a hearing is granted and cannot be completed before fuel load, then interim operation should be allowed if 10 CFR 52.103(c) requirements are met. AEA Section 189a.(1)(B)(iii) states: "If the request is granted, the Commission shall determine . . . whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license." There is no limitation on waiting until a date scheduled 270 days before anticipated fuel load passes to begin interim operation.

2. Alternative Procedures that Would Shorten Hearing Timeframe

The staff relies upon a modified Subpart L type of procedure for any ITAAC hearings. 79 Fed. Reg. at 21,964. As proposed, however, if a contention goes to hearing on Track 1, then it would take 210 days to reach an Initial Decision, assuming everything stays on schedule. This schedule does not allow for any delays that typically arise during litigation and relies upon certain goals (*e.g.*, publishing the Notice of Intended Operation 210 days before fuel load (30 days before required by regulation)). Thus, even using this schedule, some of the deadlines would need to be shortened to ensure sufficient time to administratively authorize fuel load after the Initial Decision, because the procedures acknowledge that it could take up to 10 days to make a 52.103(g) finding after an Initial Decision. 79 Fed. Reg. at 21,962.

For these reasons, it is important that the staff consider other options besides Subpart L or modifications to shorten the Subpart L process outlined in the proposed procedures. The Commission has flexibility in defining the governing hearing procedures. AEA Section 189a.(1)(B)(iv) states: "The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under clause (i), and shall state its reasons therefor."

The procedures should provide for a Track that would allow for a hearing process similar to that in Subpart N under certain circumstances. This alternative Track would dispense with any pre-filed testimony and would proceed directly to the oral hearing. The procedures should require the petitioner, in its hearing request, and the licensee and staff, in their answers, to address whether this Track should be used for any hearings on the proposed contentions.[3] This determination would be on a contention-by-contention basis. The Commission would then

[3] In the proposed procedures, the staff states: "In accordance with 10 CFR 2.309(g), hearing requests (and by extension answers to hearing requests) are not permitted to address the selection of hearing procedures under 10 CFR 2.310 for an ITAAC hearing." 79 Fed. Reg. at 21,962. SCE&G understands this statement to mean that a petitioner (and licensee/staff in answers) would not address the selection of hearing procedures that already exist in 10 CFR Part 2, because 10 CFR 2.310(j) states that the Commission would designate the procedures to be used. SCE&G, however, does not believe that participants to an ITAAC proceeding are prohibited from providing their views as to what type of hearing procedures are most appropriate from the options presented in the procedures. For example, the proposed procedures provide for a different type of hearing format for legal contentions. 79 Fed. Reg. 21,964. The participants should be allowed to state their position as to whether any of the proposed contentions are legal contentions. Additionally, if the options presented by SCE&G are incorporated into the procedures, then the participants could address which option should apply to each proposed contention.

specify as part of its decision on the hearing request whether this Track should be used. Use of a Subpart N process could save a month or more on the schedule.

The staff considered and rejected use of Subpart N because of the lack of experience using it in ITAAC hearings and because there did not appear to be significant schedule benefit. 79 Fed. Reg. at 21,964-965. Some contentions, however, may be so straightforward that it will be apparent that use of Subpart N-type procedures would have clear benefits. Additionally, given the short hearing duration, any shortening of the schedule has significant benefit.

Based on this and other comments, SCE&G concludes that there should be three options for ITAAC hearing procedures:

- Option 1 – Hearings with pre-filed written testimony and then an oral hearing (Similar to Subpart L).

- Option 2 – Hearings with no pre-filed written testimony and only an oral hearing (Similar to Subpart N).

- Option 3 – Hearings based on legal briefs in the event the only issues involved are legal in nature.

Even if Subpart L-type procedures are retained, the procedures should be revised to shorten some of the key timeframes to allow for more certainty that the ITAAC hearing will be completed before scheduled fuel load (as required by the AEA "to the maximum possible extent"). Some possible changes to the timeframes include the following, which could save more than one month on the schedule, and would bring the overall hearing process to within 180 days:

- Answers to Hearing Requests – reduce from 25 days to 20 days after hearing request

- Answers to Licensee Proposed Mitigation – reduce from 20 days to 10 days after a licensee proposes mitigation measures (assuming this briefing is retained)

- Commission Decision on Hearing Requests – reduce from 30 days to 21 days after answers (see further discussion below about bifurcating decision, if necessary); this short deadline is consistent with 10 CFR 2.309(j)(2) ("The Commission, acting as the presiding officer, shall expeditiously grant or deny the request for hearing in a proceeding under §52.103 of this chapter.") and AEA Section 189a.(1)(B)(iii)

- Pre-filed Initial Testimony – reduce from 35 days to 25 days after grant of hearing request

- Pre-filed Rebuttal Testimony (if Track 1) – reduce from 15 days to 7 days after initial testimony

- Oral Hearing – reduce from 15 days to 10 days after last pre-filed testimony

These shorter periods provide some margin in the hearing schedule to accommodate unexpected delays while still enabling the presiding officer to make a decision prior to the scheduled fuel load date.

3. Pre-Clearance Process for Access to SGI

The procedures state that the staff plans to publish a plant-specific *Federal Register* notice 180 days prior to the expected Notice of Intended Operation to inform potential participants of a "pre-clearance" process to gain access to SGI. 79 Fed. Reg. at 21,965. Given the plan to publish the Notice of Intended Operation 210 days before scheduled fuel load, the staff stated that "this pre-clearance notice would be issued about 390 days before scheduled fuel load." 79 Fed. Reg. at 21,965 n.16.

As discussed above, SCE&G believes that it would be reasonable for a licensee to submit the UIN a few months prior to the deadline of 225 days before fuel load, and that this early submission should result in a similarly early publication of the Notice of Intended Operation. Given this possibility, the Staff should publish the pre-clearance notice earlier than 390 days before scheduled fuel load. SCE&G believes that publishing the pre-clearance notice 90 days earlier (*i.e.*, 480 days before scheduled fuel load) would be appropriate. That will ensure that the clearance process does not delay the hearing, regardless of its timing. Additionally, earlier publication of the pre-clearance notice should have no impact on any interested members of the public.

4. Notification of Plans to Submit Hearing Requests

Hearing requests will be submitted during a time of important construction activities and substantial activities to close ITAAC. Many of the NRC staff and licensee personnel who will be involved in these activities likely also will be involved in evaluating and responding to any hearing requests. For example, these personnel will be involved in helping to analyze proposed contentions and in considering any specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety. These personnel will likely also assist with evaluating whether ITAAC meet the requirements in 10 CFR 52.103(c) for interim operation, including any mitigation or other limitations.

Given these circumstances and the short timeframe for responding to hearing requests, there would be significant benefits for early notification that a petitioner plans to submit a hearing request. To do this, the procedures should state that anyone who plans to submit a hearing request should provide notice to the NRC staff and licensee within 30 days after publication of the Notice of Intended Operation, including identification of the ITAAC that will be the subject of the hearing request and a brief basis for the position that the ITAAC have not been or will not be satisfied. This will enable the staff and licensee to ensure knowledgeable personnel are available to participate in the process on a timely basis, gather relevant information as necessary, execute any necessary non-disclosure agreements, etc. This notification also could result in discussions among the participants and possible early resolution of issues that otherwise would be the subject of the hearing request.

5. APA Exception for Hearings

The procedures should address the exception for hearings in the Administrative Procedures Act (APA) for NRC findings that are based upon inspections and tests. Specifically, the APA provides an exception to the hearing requirement for adjudications that involve "proceedings in which decisions rest solely on inspections, tests, or elections." 5 U.S.C. § 554(a)(3). In the 1989 rulemaking for Part 52, the Commission stated:

> The Commission agrees that findings which rest solely on the results of tests and inspections should not be adjudicated, and the final rule so provides. See § 52.103. However, not every finding the Commission must make before operation begins under a combined license will necessarily always be based on wholly self-implementing acceptance criteria and therefore encompassed within the APA exception. The Commission does not believe that it is prudent to decide now, before the Commission has even once gone through the process of judging whether a plant built under a combined license is ready to operate, that every finding the Commission will have to make at that point will be cut-and-dried—proceeding according to highly detailed "objective criteria" entailing little judgment and discretion in their application, and not involving questions of "credibility, conflicts, and sufficiency", questions which the Court in UCS v. NRC, 735 F.2d 1437 (D.C. Cir. 1984), held were marks of issues which should be litigated at least under the facts of that case. Indeed, trying to assure that the tests, inspections, and related acceptance criteria in the combined license are wholly self-implementing may well only succeed in introducing inordinate delay into the hearing on the application for a combined license. Final Rule, Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Reactors, 54 Fed. Reg. 15,372, 15,380 (Apr. 18, 1989).

The Commission further stated that the final rule in 10 CFR 52.103 "makes issues of conformity with the terms of the combined license part of any post-construction hearing, unless those issues are excepted from adjudication by the APA exception for findings which are based solely on the results of tests and inspections. The final rule does not attempt to say in advance what issues might fall under that exception." 54 Fed. Reg. at 15,381.

In fact, the language in 10 CFR 52.103 used to explicitly call out the APA exception in Section 554(a)(3). This language was removed in 1992 when the wording of Section 52.103 was changed to incorporate relevant language from the Energy Policy Act of 1992 into the regulation. *See* 57 Fed. Reg. at 60,976.

The more recent 2007 Part 52 rulemaking also states:

> [T]he NRC has always recognized the possibility that ITAAC could be written such that the "inspections and tests" exception in Section 554(a)(3) of the APA could be invoked to preclude the need to provide an opportunity for hearing on § 52.103(g) findings. Final Rule, Licenses, Certifications, and Approvals for Nuclear Power Plants, 72 Fed. Reg. 49,352, 49,428 (Aug. 28, 2007).

In a May 25, 2006 comment letter on the Part 52 rulemaking, NEI proposed revisions to the NRC's ITAAC hearing process to capture the APA exception. Among other things, NEI argued:

> The scope of the Section 554(a)(3) exemption has generally been construed to include 'technical facts ... as to which administrative hearings have long been thought unnecessary' and situations where an agency relies on the 'judgment' of a tester or inspector. *Door v. Donaldson*, 195 F.2d 764 (D.C. Cir. 1952); *see also* Attorney General's Committee on Administrative Procedure, Final Report to President and the Congress, at 37 (1941) (noting that "resort to formal procedures [for inspections, tests, and elections] ... is not desired or utilized ... because it gives no added protection"); S.Rep. No. 752, 79th Cong., 1st Sess. 16 (1945) (exempting inspections, tests, and elections "because those methods of determination do not lend themselves to the hearing process").
>
> We believe that the APA Section 554(a)(3) exemption relieves the NRC from the obligation to conduct any hearing under Section 52.103 when the question of whether a new facility complies with an ITAAC can be decided solely on the basis of inspections or test results. In *Union of Concerned Scientists v. U.S. Nuclear Regulatory Commission*, the Court acknowledged that Congress did not mean to require a hearing where a hearing would serve no purpose. 735 F.2d 1437, 1449-1450 (D.C. Cir. 1984). In the UCS case, the Court described the generic APA provision as an exemption from AEA 'Section 189(a)'s hearing requirement,' not as an exemption from APA Section 554 procedures.[4]

In its response to NEI's comment letter, the NRC stated:

> The Commission agrees with the commenter that Section 554(a)(3) exception of the Administrative Procedures Act (APA) may be used to in appropriate circumstances to avoid a § 52.103 hearing

[4] Letter from A. Heymer, NEI, to NRC, Licensing and Hearing Process Issues Relating to NRC Proposed Rule, "Licenses, Certifications and Approvals for Nuclear Power Plants," 71 Fed. Reg. 12,782 (Mar. 13, 2006) (RIN 3150-AG24), Attachment, at 13 (May 25, 2006).

> on whether a specific ITAAC (or portion of an ITAAC) has been satisfied. However, as the commenter notes, there are many alternative approaches for the NRC to make the determination of which ITAAC fall within the ambit of the APA exception. (See May 25, 2006 NEI letter, p. 14.) There has never been a § 52.103 hearing, so there is no applicable experience that the Commission could draw upon when formulating a generic rulemaking requirement. None of these alternatives (and other alternatives identified within the NRC) were discussed in the SOCs for either the 2003 or 2006 proposed rules. Adopting by rule a particular approach for invoking the APA Section 554(a)(3) exclusion, under these circumstances, is likely to result in adverse public assessments of the Commission's actions. Finally, the need for resolution of this issue as part of this rulemaking is not clear, given that such hearings are unlikely to occur until well into the next decade. Accordingly, the Commission concludes that adoption of detailed rulemaking requirements governing the use of the APA Section 554(a)(3) exception in this final rulemaking would not be prudent.[5]

With this in mind, the ITAAC hearing procedures should acknowledge the APA exception and provide greater guidance on how this exception will be applied to contentions related to ITAAC. The procedures should preserve the option for participants to argue that the exception does or does not apply to particular ITAAC. To demonstrate that the APA hearing exception applies, participants should provide the basis for a conclusion that the ITAAC in question involves highly detailed objective criteria entailing little judgment and discretion in their application (*i.e.*, wholly self-implementing acceptance criteria), and not involving questions of credibility, conflicts, and sufficiency. The Commission could then rule on the APA exception as part of its decision on a hearing request.

6. Licensee Hearing Requests

The procedures state that a licensee may request a hearing on a dispute between the licensee and the NRC staff on whether acceptance criteria are met. 79 Fed. Reg. at 21,969; Draft Template A at 11. It is unclear from the discussion whether the staff believes that the licensee would need to satisfy other standards for obtaining a hearing, such as submission of a contention that meets the 10 CFR 2.309(f) requirements (although the procedures state that the *prima facie* requirements do not apply). Given that a dispute between the licensee and the NRC staff over satisfaction of acceptance criteria would automatically provide an adequate basis for a hearing, the procedures should clarify that a licensee need only request a hearing for it to be granted. This would be similar to an applicant's right to demand a hearing under 10 CFR 2.103(b) under certain circumstances. This would greatly reduce the burden and time required for any licensee hearing requests and would expedite resolution of any such disputes.

---

[5] Comment Summary Report, Final Rule for 10 CFR Part 52 Licenses, Certifications, and Approvals for Nuclear Power Plants, at 75 (July 2007).

Unlike 10 CFR 2.103(b), there would be no notice of proposed denial or notice of denial of an application that would initiate the right of the licensee to request a hearing. Therefore, the licensee should have 20 days from the date that the staff determines that an ITAAC has not been satisfied to request a hearing.

7. Claims of Incompleteness

The procedures allow a petitioner to submit a "claim of incompleteness" based on the part of 10 C.F.R. § 2.309(f)(1)(vii) that states: "If the requestor identifies a specific portion of the §52.99(c) report as incomplete and the requestor contends that the incomplete portion prevents the requestor from making the necessary *prima facie* showing, then the requestor must explain why this deficiency prevents the requestor from making the *prima facie* showing." 79 Fed. Reg. at 21,966; Draft Template A at 9-10; Draft Template D.

The AEA does not require or allow the NRC to consider claims of incompleteness. Instead, the only valid contention under Section 189a.(1)(B)(ii) of the AEA is "that one or more of the acceptance criteria in the combined license have not been, or will not be met." In that regard, in Part 50 Operating License proceedings, a licensee is not required to submit any results of its inspections and tests (or provide a description of the procedures for inspections and tests beyond that contained in the final safety analysis report), and claims of incompleteness thereon do not exist. Since claims of incompleteness are not cognizable in Operating License proceedings, they should not be permitted in 52.103 hearings.

Claims of incompleteness present a substantial risk of delay in ITAAC hearings. As proposed, the staff's procedures would automatically result in a delay if any claim of incompleteness is granted, because they would delay submission of a proposed contention based on additional information provided by a licensee to address the incompleteness until after the initial deadline for proposed contentions. 79 Fed. Reg. at 21,973. By allowing claims of incompleteness, the NRC likely will be challenged with meeting the schedule for an Initial Decision before scheduled fuel load.

To prevent this delay, any claims of incompleteness should be required to be submitted shortly after the Notice of Intended Operation, identifying with specificity the information that is allegedly missing. Within a corresponding short period, the licensee would be required to submit new information to address the alleged incompleteness (or to demonstrate that there is no incompleteness). The Commission would then rule on the claims of incompleteness in a manner that would allow the petitioner to submit a proposed contention based on that new information by the original deadline. Later claims of incompleteness should not be allowed, because a petitioner should have sufficient information between the already submitted ICNs and the information in the UIN to determine at the time of the Notice of Intended Operation whether any information is incomplete as defined in 10 CFR 2.309(f)(1)(vii). Because the AEA does not require claims of incompleteness, and such claims are not themselves hearing requests, this revised schedule for claims of incompleteness does not contradict AEA Section 189a.(1)(B). The schedule for claims of incompleteness should proceed as follows:

- A petitioner submits any claim of incompleteness within 10 days after the Notice of Intended Operation;

- The licensee responds to the claim of incompleteness within 5 days after it is made;

- The Commission rules on claims of incompleteness within 10 days after the licensee's answer;

- The licensee would provide any additional information to address a valid claim of incompleteness within 5 days; and

- If, based upon the additional information submitted by the licensee, the petitioner believes that the acceptance criteria in the ITAAC have not or will not be satisfied and the other remaining criteria in 10 CFR 2.309(f)(1) are met, then the petitioner would still have 30 days to submit a proposed contention, which would correspond with the original deadline for proposed contentions of 60 days after the Notice of Intended Operation.

The staff also should clarify the standard to be applied to a claim of incompleteness. The NRC, industry, and members of the public have undertaken substantial effort to develop NEI-08-01 (Industry Guideline for the ITAAC Closure Process Under 10 CFR Part 52), which addresses ICNs. NEI-08-01 has been endorsed by the NRC staff in Regulatory Guide 1.215 (Guidance for ITAAC Closure Under 10 CFR Part 52). If an ICN (or corresponding discussion in the UIN) complies with NEI-08-01, then it is complete and the licensee would be in compliance with 10 CFR 52.99 and would not need to submit any additional information.

8. Late Filings

The proposed procedures contemplate hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed after the original deadline. 79 Fed. Reg. at 21,966-967. These late filings could present a significant potential for delay in fuel load. To address this risk, the procedures state: "the deadline for an initial decision on the amended contention (which is a strict deadline) would be the same date as the deadline for an initial decision on the original contention." 79 Fed. Reg. at 21,967. Given the realities of holding a hearing and the potential for late filings close to scheduled fuel load, it may not be possible to meet the Initial Decision deadline with the proposed procedures.

To address this schedule risk, late filings should only be allowed in very narrow circumstances. As commented above, late claims of incompleteness should never be allowed. Other late filings should only be permitted for ITAAC that were not completed at the time of the NRC's Notice of Intended Operation, and then only if the proposed contention: 1) pertains to the completed ITAAC; and 2) does not involve any allegations of deficiencies in the procedures and analytical methods discussed in the UIN. Additionally, amended contentions should not be allowed, except to address a licensee's new ICN or ITAAC maintenance letters that invalidate a previously-completed ITAAC.

9. Late Requests for SUNSI/SGI

The proposed procedures allow for late requests for SUNSI/SGI that will be considered with a showing of good cause for the late filing, addressing why the request could not have been filed earlier. Draft Template A at 39. Contrary to these procedures, late requests for SUNSI/SGI should not be entertained due to the potential for delay in fuel load. Petitioners already have the opportunity to request SUNSI/SGI at the beginning of the hearing process. The need for late access to SUNSI/SGI (that is not related to disclosure obligations for an admitted contention) should not exist.

10. Bifurcation of Decision on Hearing Request

If the Commission is not able to issue a full decision on a hearing request in a timely manner, then it would be possible for the Commission to bifurcate its decision. The first part of the decision would address any portion of the hearing request that is granted, which would allow expeditiously proceeding to the hearing phase on those topics. The remainder of the decision then could be issued in due course. This would support issuance of an Initial Decision in a timely manner and prior to scheduled fuel load (as required by AEA Section 189a.(1)(B)(v) "to the maximum possible extent").

The use of a bifurcated decision already is available to presiding officers in adjudicatory proceedings. This option should be specifically discussed in the hearing procedures. Including this option in the hearing procedures will ensure that presiding officers are reminded of this possibility, which may be important for expeditious resolution of contested issues in an ITAAC hearing. Use of bifurcated decisions alone could save weeks on the schedule and help prevent delays in fuel load.

11. Interim Operation

a. Timing of Decision on Interim Operation

AEA Section 189a.(1)(B)(iii) states:

> After receiving a request for a hearing under clause (i), the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' prima facie showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license.

Similar statements regarding interim operation are provided in 10 CFR 52.103(c).

The proposed procedures state: "The Commission has discretion regarding the timing of the adequate protection determination for interim operation, but since the purpose of the interim operation provision is to prevent the hearing from unnecessarily delaying fuel load, an interim operation determination will be sufficiently expeditious if it is made by scheduled fuel load." 79 Fed. Reg. 21,966; *see also* Draft Template A at 12-14, 24. This view of the timing of an interim operation decision is not consistent with the AEA or NRC regulations, could unnecessarily delay operation, and should be revised.

As shown above, the AEA states that the Commission is to make the interim operation decision after considering "petitioners' prima facie showing and any answers thereto." Thus, the Commission should make the interim operation decision in its decision ruling on any hearing request. There is no indication in the AEA or Section 52.103(c) that the Commission should or can wait until just prior to fuel load. To the contrary, Section 52.103(c) states: "If the Commission grants the request, the Commission, acting as the presiding officer, shall determine whether during a period of interim operation there will be reasonable assurance of adequate protection to the public health and safety." Like the AEA, Section 52.103(c) ties the interim operation decision to a decision granting a hearing request.

The statement in the proposed procedures that an interim operation decision is "sufficiently expeditious" if it is made before scheduled fuel load also does not reflect the reality of the situation. First, the licensee may do better than its scheduled fuel load date, and should not need to await a late interim operation decision tied to scheduled fuel load, as long as all other requirements for interim operation have been satisfied. Second, a licensee needs time to mobilize its workforce to support fuel load. If a licensee does not know whether it can load fuel until as late as the date for scheduled fuel load, then it will be seriously disadvantaged with respect to planning, or it will need to incur significant costs to maintain a ready workforce without knowing if it can actually proceed with loading fuel.

b. Additional Briefing on Mitigation

Aside from the timing issue discussed above, the proposed procedures should not mandate additional briefing if a licensee proposes mitigation. The proposed procedures state:

> If the Commission grants the hearing request, it may determine that additional briefing is necessary to support an adequate protection determination. If the Commission makes this determination, then it will issue a briefing order concurrently with the granting of the hearing request. In addition, if mitigation measures are proposed by the licensee in its answer to the hearing request, then the Commission would issue a briefing order allowing the NRC staff and the petitioners an opportunity to address adequate protection during interim operation in light of the mitigation measures proposed by the licensee in its answer. 79 Fed. Reg. at 21,966.

Given the wording of AEA Section 189a.(1)(B)(iii) and 10 CFR 52.103(c) that the Commission should make an interim operation determination based on the "petitioners' prima facie showing and any answers thereto," the Commission should not need to seek any additional briefing on interim operation. Moreover, although the Commission has the discretion to request additional briefing, the procedures should not require such briefing.

c. Standard for a Decision on Interim Operation

The proposed procedures state: "The legislative history of the EPAct indicates that Congress did not intend the Commission to rule on the merits of the petitioner's *prima facie* showing when making the adequate protection determination for interim operation. Instead, Congress intended interim operation for situations in which the petitioner's *prima facie* showing relates to an asserted adequate protection issue that will not arise during the interim operation period, or in which mitigation measures can be taken to preclude potential adequate protection issues during the period of interim operation." 79 Fed. Reg. at 21,962. These procedures inappropriately limit the Commission's decision on interim operation.

The staff relies on the statements of one Senator in the legislative history to support its position. Those statements, however, do not appear to support the staff's position that the "legislative history of the EPAct indicates that Congress did not intend the Commission to rule on the merits of the petitioner's *prima facie* showing when making the adequate protection determination for interim operation." 79 Fed. Reg. at 21,962. Instead, those statements provide that "[t]he authority to allow interim operation is limited" and then give some *examples* about safety problems not occurring for several years or use of mitigating measures. *See* 138 Cong. Rec. S1686 (Feb. 19, 1992) (statement of Sen. Johnston) (reproduced in SECY-13-0033, Allowing Interim Operation Under Title 10 of the Code of Federal Regulations Section 52.103, at 4 (Apr. 4, 2013)). Those statements did not limit the Commission's authority for interim operation; instead, they only provide examples for how the interim operation requirements could be met. Furthermore, there is other information in the legislative history that indicates that the Commission should make a merits determination on whether there is reasonable assurance.[6]

Additionally, even if the statements of the Senator did somehow limit interim operation, the Commission is bound by the wording of the AEA, not these statements in the legislative history. AEA Section 189a.(1)(B)(iii) states that "[i]f the Commission determines that there is such reasonable assurance [of adequate protection during a period of interim operation], it shall allow operation during an interim period under the combined license." There is nothing in either the AEA or the NRC regulations that requires (or allows) the Commission to rule in favor of an intervenor if it has made a *prima facie* showing on the reasonable assurance issue, without regard to the showing provided by the licensee or the staff. Instead, both the AEA and the NRC

---

[6] For example, the Senate Report of the Committee on Energy and Natural Resources, Report 102-7, at 295-96 (June 5, 1991) states that Section 189a.(1)(B)(iii) of the Act "authorizes the NRC to allow a plant to begin operation under its combined license even though a hearing is still pending under subparagraph (B) unless: (1) the Commission decides that the hearing petitioners are *likely to succeed on the merits of their case*; and (2) the Commission does not have reasonable assurance that the public health and safety would be adequately protected in the event the plant were allowed to operate." (Emphasis added).

regulations require the Commission to make a determination on the merits of whether there is reasonable assurance.

In particular, the staff's position is contrary to the plain words of 10 CFR 52.103(c), which states that the Commission "shall determine whether during a period of interim operation there will be reasonable assurance of adequate protection to the public health and safety" and "must consider the petitioner's prima facie showing." Similar provisions are in AEA Section 189a.(1)(B). While the Commission will not rule on the merits of the contention (*i.e.*, make the same finding as the Initial Decision) in making the 52.103(c) interim operation finding, there is no prohibition on the Commission considering the positions of all parties on whether there is reasonable assurance of adequate protection during interim operation, assuming that the petitioner has made a *prima facie* case that the ITAAC has not been met. In other words, in making the 52.103(c) finding, the Commission will determine whether there is reasonable assurance of adequate protection during interim operation. The Commission is not bound to make a negative determination on this question merely because the petitioner has made a *prima facie* case on the reasonable assurance question (as distinct from a *prima facie* case on whether the ITAAC have been met), provided that the NRC staff and/or the licensee have presented more persuasive evidence that there will be reasonable assurance of adequate protection during interim operation.

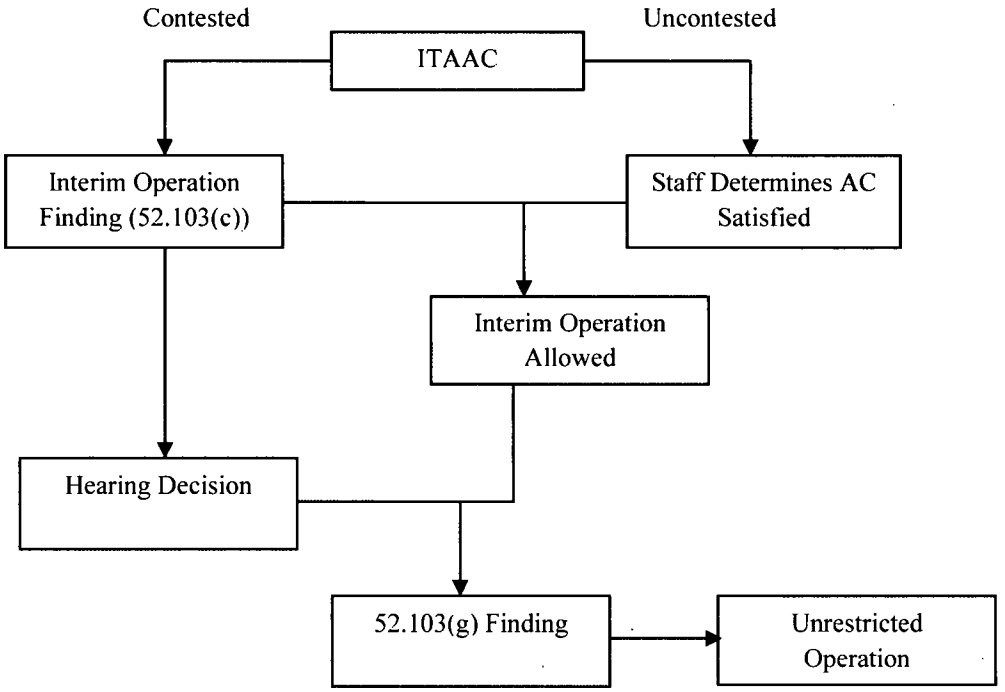
Finally, the evaluation of reasonable assurance of adequate protection during a period of interim operation is a fact-specific determination. It is not reasonable at this time to try to limit the basis for a Commission determination on interim operation under 10 CFR 52.103(c). That determination should be evaluated only once a petitioner submits a hearing request challenging specific ITAAC and the staff and licensee have answered the hearing request.

d. Relationship Between 52.103(c) and 52.103(g) Findings

The proposed procedures state: "Because AEA § 185b. requires the NRC to find that the acceptance criteria are met prior to operation, interim operation cannot be allowed until the NRC finds under 10 CFR 52.103(g) that all acceptance criteria are met, including those acceptance criteria that are the subject of an ITAAC hearing." 79 Fed. Reg. 21,962. This conclusion does not fully account for the AEA's allowance of interim operation.

The staff's conclusion that a Section 52.103(g) finding that all acceptance criteria are met must be made before interim operation (including for contested ITAAC) is contrary to Section 52.103(c), which allows interim operation separate from 52.103(g). The staff should clarify this discussion to indicate that interim operation can be authorized if there is adequate protection, despite the pendency of a hearing on an ITAAC and the lack of a 52.103(g) finding, as long as the Commission has approved interim operation with respect to the ITAAC subject to the hearing and the staff has concluded that the acceptance criteria have been met for all of the uncontested ITAAC.

SCE&G believes the following process is more consistent with the AEA and NRC regulations than that set forth in the proposed procedures.



The above process is necessary to give full account of the AEA allowance for interim operation.

The staff points to AEA Section 185b. to conclude that the staff must make a 52.103(g) finding before operation, even for the contested ITAAC. AEA Section 185b., however, must be read in context with the interim operation provision in AEA Section 189. The above process does so. The staff fails to account for the difference between "interim" operation after a 52.103(c) finding and "unrestricted" operation after a 52.103(g) finding. Interim operation, by its nature, puts the licensing process in a unique position.

Additionally, the proposed procedures would have the staff make a finding on whether the acceptance criteria are met under 52.103(g) for the contested ITAAC while the Commission would determine whether the petitioner has made a *prima facie* showing that the acceptance criteria for the same ITAAC have not been met. This would be anomalous to say the least. Our proposed process above would avoid that situation, and would leave the interim operation decision to the Commission on the contested ITAAC, a decision on whether the ITAAC has been met to the presiding officer, while leaving the acceptance criteria finding for all of the uncontested ITAAC with the staff.

The above process also is consistent with NRC regulations regarding issuance of a finding on acceptance criteria under 10 CFR 52.103. Specifically, 10 CFR 2.340(j) states that the 10 CFR 52.103(g) finding should only be made after the presiding officer concludes that the acceptance criteria for the contested ITAAC have been met. This would not be the case under the proposed procedures. Our proposed process, however, is fully consistent with that regulation. The proposed procedures attempt to address this inconsistency by stating that there

may be situations in which the Section 2.340(j) process does not apply. The regulations should be interpreted to give meaning to all of them to the extent possible. The above process does that.

If the NRC staff rejects the above comment and maintains that a 10 CFR 52.103(g) finding must be made prior to interim operation, then it should explain that the 52.103(g) finding to support interim operation only applies to uncontested ITAAC. Any findings to support interim operation on contested ITAAC would be addressed by the Commission's 52.103(c) finding.

12. Presiding Officer

The procedures keep open whether a hearing would be conducted by the Commission, a licensing board, or a single legal judge. 79 Fed. Reg. at 21,963. It would be beneficial to decide now who will conduct any ITAAC hearings—the Commission or a licensing board/single legal judge. SCE&G takes no position on who should be the presiding officer for any ITAAC hearing, but concludes that the decision should be made now. This would reduce the complexity of the hearing procedures and remove potential administrative delays in the future due to postponing this decision. For example, if a licensing board knows that it will be the presiding officer for an ITAAC hearing, then there would be substantial benefit to that board to understand that as early as possible in order to prepare for potential hearings and to follow the briefing related to any hearing requests. Any time savings from an early decision on the presiding officer will have important benefits to ITAAC hearings given their compressed schedule.

Additionally, nothing will change between now and submission of the first hearing request in an ITAAC hearing to justify delaying this decision. Waiting until after hearing requests are submitted, or even until the Commission rules on any hearing requests, could have negative impacts on the overall ITAAC hearing schedules. Moreover, this decision is similar to the decisions that the Commission has already made on who will be the presiding officer for other portions of the hearing process, including the presiding officer for decisions on hearing requests and interim operation. Therefore, the staff should recommend to the Commission that the Commission make a decision now as part of consideration of these ITAAC hearing procedures about who would preside over any ITAAC hearing. If the Commission does not make a decision on the presiding officer at this time, then SCE&G recommends that the procedures include some objective criteria that would be used when that decision is made in the future.

13. Legal Contentions

The proposed procedures state that the procedures for hearings on legal issues would be resolved based on written legal briefs. 79 Fed. Reg. at 21,973; Draft Template C. The procedures, however, do not explain what constitutes a contention on a legal issue. Currently, they only state that legal contentions are "contentions that raise only legal issues." 79 Fed. Reg. at 21,964. The procedures should include further guidance on this topic. The definition of legal contention should be defined broadly to include any contention that does not involve a dispute of fact.

14. Notifications

The proposed procedures state that the presiding officer and parties be informed the same day that a licensee submits an ICN or ITAAC post-closure notification for a challenged ITAAC. 79 Fed. Reg. at 21,969; Draft Template A at 28-29; Draft Template B at 23-24. That notice also would be required to "state the effect that the notice has on the proceeding." 79 Fed. Reg. at 21,970. Although this same day notification may be achievable under some circumstances, it may be challenging in others. For example, the ICN or ITAAC post-closure notification for a challenged ITAAC could be made late in the day or could be made when the responsible personnel for preparing and submitting the notification are not immediately available. It also may take some deliberation to reach a conclusion about the effect that the notice has on the proceeding. Given these circumstances, the notification period should be changed from the same day to the next business day, to allow legal counsel time to make the requisite filing and explain the effect on the proceeding. Nonetheless, licensees have an incentive to file the notifications as quickly as possible.

15. Discovery

If a contention is admitted, then the proposed procedures would require mandatory disclosures that generally follow 10 CFR 2.336 requirements (with certain modifications). 79 Fed. Reg. at 21,972-973; Draft Template B at 11-19. The proposed procedures would not limit the documents subject to disclosure, but would retain the requirement in Section 2.336(a)(2)(i) to disclose "documents and data compilations in the possession, custody, or control of the party that are relevant to the contentions." The proposed procedures also would require disclosure updates every 14 days.

These discovery provisions are too expansive, especially given the abbreviated period for disclosures and the limited scope of ITAAC hearings. The procedures should be revised to limit discovery. First, discovery should not include drafts, e-mails, notes, privileged materials, news articles, and other such documents of limited or no probative value. Second, given the short periods involved, discovery updates should not be required (or the obligation should terminate upon the close of the hearing). Third, the procedures should specify that the parties have the following respective discovery obligations:

- The discovery obligations of the licensee should include the ITAAC completion package for the particular ITAAC subject to the hearing, along with those documents directly referenced therein.

- The discovery obligations for the NRC staff should include inspection reports and inspection records that relate to the ITAAC subject to the hearing.

- The discovery obligations of the petitioner should include all claims, witness statements, expert reports or other analyses that relate to the ITAAC subject to the hearing.

Notwithstanding these limitations, the parties would be required to disclose all documents that they intend to rely upon as part of the hearing. Additionally, if the nature of the admitted

contention is such that further discovery is warranted, then the Commission could provide such directions in its decision admitting a particular contention. These changes are necessary to make discovery manageable in an ITAAC hearing.

16. Protective Order

The procedures state that a party seeking access to SUNSI related to an admitted contention would first seek access from the party possessing the SUNSI. 79 Fed. Reg. at 21,973. If the SUNSI is proprietary information from the licensee, then it would need to be disclosed under a protective order and non-disclosure agreement. The procedures should include a protective order template that could be implemented quickly if any contentions are admitted for hearing that may require disclosure of proprietary information.

17. Motions in Limine or Motions to Strike

The procedures state that motions in limine or motions to strike will not be permitted because they would lead to delay without compensating benefit. 79 Fed. Reg. at 21,972; Draft Template B at 32-33. This discussion should be clarified to state that there would be no prohibition on participants raising evidentiary objections at the hearing or in their rebuttal testimony (if there is rebuttal testimony). This would allow participants to articulate in writing any objections to evidence raised in initial testimony (*e.g.*, evidence outside of scope), but with the understanding that the presiding officer would not rule on any objections prior to the oral hearing.

18. Duration of Oral Hearing

The proposed procedures assume that the oral hearing would last one day. 79 Fed. Reg. at 21,971. That may not be realistic if there are multiple contentions for hearing, or if a single contention raises factually-complex issues with multiple witnesses by each party. Although any ITAAC contention may be narrower in scope than other contentions that have gone to hearing under Subpart L, oral evidentiary hearings typically last one day or more for each contention. Therefore, the procedures should acknowledge the possibility of the oral hearing lasting more than one day, and should allow for changes in the overall schedule to ensure that the Initial Decision can still be issued by scheduled fuel load.

19. Limited Appearance Statements

The proposed procedures state: "Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to 10 CFR 2.315(a). In the discretion of the presiding officer, a person making a limited appearance may make an oral or written statement of position on the issues, at any session of the hearing or any prehearing conference within the limits and on the conditions fixed by the presiding officer." Draft Template A at 14.

The procedures should be revised to state that only written limited appearance statements are permitted, in order to avoid prolongation of the oral hearing. This is important given the

short ITAAC hearing timeframe and to prevent unnecessary complication of the oral hearing. Not allowing oral limited appearance statements also is consistent with the practice during some recent Subpart L evidentiary hearings, which have only allowed written limited appearance statements.

20. Written Statements of Position

The proposed procedures state that written statements of position may be filed in the form of proposed findings of fact and conclusions of law, and this may obviate the need for post-hearing findings of fact and conclusions of law. 79 Fed. Reg. at 21,972; Draft Template B at 32. Contrary to this proposal, written statements of position cannot take the place of proposed findings of fact, because the written statements cannot account for the testimony and exhibits of the other parties or the oral testimony during the hearing. Therefore, the procedures should allow for the written statements of position to be filed in the form of proposed findings of fact or conclusions of law, but this should not factor into any decision about the need for post-hearing findings of fact and conclusions of law.

21. Requests for Stays

The proposed procedures state that if the Commission determines that there is adequate protection during the period of interim operation, a request to stay the effectiveness of this decision would not be entertained. 79 Fed. Reg. at 21,966. SCE&G agrees with this position. The proposed procedures, however, allow other types of stays. 79 Fed. Reg. at 21,969; Draft Template A at 35; Draft Template B at 39-40. The procedures should be revised to prohibit any requests for stays. Such requests present the potential for substantial delays in operation.