TEMPLATE KEY:

- *Brackets ("[" and "]") designate information that will need to be inserted into the document when it is issued in a specific proceeding.*
- *Curly brackets ("{" and "}") designate cases where a particular procedure would only apply under certain conditions.*
- *Angle brackets ("<" and ">") designate information about the template that is for information only and will not appear in the document that is issued in a specific proceeding.*

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

[List Commissioners]

In the Matter of	)	
	)	
LICENSEE	)	Docket No. 52-0XX-COL
	)	
(Facility Name)	)	
	)	

CLI-XX-__

MEMORANDUM AND ORDER

Today we granted the request of _____ for a hearing concerning [licensee's] intent to operate [facility name and unit number].[1] We admitted __ contention(s), which assert(s) that the facility as constructed does not, or upon completion of construction will not, comply with the acceptance criteria set forth in the combined license.[2] This order provides a schedule and procedures for the conduct of the hearing, which will take place before either an Atomic Safety

[1] CLI-XX-XX, XX NRC __ (DATE) (slip op.).

[2] The acceptance criteria are part of the inspections, tests, analyses, and acceptance criteria (ITAAC) set forth in Appendix [X] of the combined license.

and Licensing Board or a single legal judge (assisted as appropriate by technical advisors), as determined by the Chief Administrative Judge.[3]

I. BACKGROUND

The Atomic Energy Act of 1954, as amended (AEA), grants us discretion to establish appropriate procedures for conducting a hearing on whether a facility as constructed complies, or upon completion will comply, with the acceptance criteria in the combined license, provided that we explain our reasoning for establishing those procedures.[4] As provided by 10 C.F.R. § 2.310(j), the procedures for a hearing on conformance with the acceptance criteria are designated by the Commission on a case-specific basis. We developed these procedures based on our rules of practice in 10 C.F.R. Part 2, primarily Subparts C and L, adopting or modifying them as necessary to conform to the expedited schedule and specialized nature of these hearings, as well as to fit the particular issues raised by [petitioner's] contention(s). We modeled the procedures on the existing rules in Subparts C and L because they have proven effective in promoting a fair and efficient process in adjudications and there is a body of experience and precedent interpreting and applying these provisions. In addition, using the existing rules to the extent possible could make it easier for potential participants in the hearing to apply the procedures in this order if they are already familiar with the existing rules.[5] To the

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[3] *<While this template represents the presumed default procedures for this stage of the ITAAC hearing process, the Commission may, consistent with 10 C.F.R. § 2.310(j), direct that the ITAAC hearing be conducted in accordance with other procedures designated by the Commission.>*

[4] AEA § 189a.(1)(B)(iv), 42 U.S.C. § 2239(a)(1)(B)(iv).

[5] The procedures and schedule imposed by this order are based on a set of general procedures that we approved after the consideration of public comments. *See* [*Federal Register* notice announcing final procedures and providing responses to comments]; [*Federal Register* notice soliciting comments on draft procedures]. The notice in the *Federal Register* accompanying those general procedures provides a further explanation of their bases. {*If the Commission makes case-specific modifications to these general procedures, then also state:* As explained (continued . . .)

extent that we have modified these rules, we provide the basis for our decision below. And to the extent that we have adopted the rules with little or no change, we incorporate by reference the basis for their promulgation in 10 C.F.R. Part 2.

II. HEARING SCHEDULE

Because of circumstances and features unique to ITAAC hearings, some modifications to our hearing procedures are warranted. An ITAAC hearing is necessarily under narrow time constraints because for such hearings, the AEA provides that the "Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the [notice of intended operation] or the anticipated date for initial loading of fuel into the reactor, whichever is later."[6] ITAAC hearings will also be narrowly focused on the admitted contentions, which themselves are confined by the terms of the ITAAC.

To meet our expectation for a timely decision on the admitted contention[s], we have established a "strict deadline" for the issuance of the initial decision that may only be extended upon a showing that "unavoidable and extreme circumstances" necessitate a delay.[7] In addition, the presiding officer may extend the strict deadline only after notifying the Commission of its decision with an explanation of why "unavoidable and extreme circumstances" necessitate a delay. The notification should state the length of the delay and explain why the length of the delay is justified in light of the "unavoidable and extreme circumstances." We expect that the presiding officer will make this notification at the earliest practicable opportunity after the presiding officer determines that an extension is necessary.

(. . . continued)
below, we have modified these general procedures to tailor them to the specific circumstances of this proceeding.}

[6] AEA § 189a.(1)(B)(v), 42 U.S.C. § 2239(a)(1)(B)(v).

[7] *See* Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998). This policy statement was also published in the *Federal Register* on August 5, 1998. 63 Fed. Reg. 41,872.

In addition to this strict deadline, we have established "default deadlines," which are requirements to which the parties must conform. Default deadlines, however, may be modified by the presiding officer for good cause. Target dates that have not been designated as a "strict deadline" or a "default deadline" should be considered milestones, which are not requirements, but the presiding officer is expected to adhere to these milestones to the best of its ability in an effort to reach a timely decision on this/ese matter(s). The presiding officer, however, may revise the milestones in its discretion, with input from the parties, keeping in mind the strict deadline for the overall proceeding. Furthermore, we expect the presiding officer to make minor adjustments to milestones as necessary to avoid any delay in the proceeding.[8]

The presiding officer shall hold a prehearing conference and issue an initial scheduling order. The milestone for the prehearing conference is that it be held within 7 days of this order and the milestone for the initial scheduling order is that it be issued within 3 days of the prehearing conference. An oral hearing will be held unless all the parties to the proceeding agree that an oral hearing is not necessary.

The schedule for this hearing is provided in the table below. While we have set an aggressive schedule in order to satisfy the Congressionally-mandated goal for completion of the hearing, we believe that this schedule is feasible and will allow the presiding officer and the parties a fair opportunity to develop a sound record for decision.

For the reasons given in the general ITAAC hearing procedures, we adopted a default evidentiary hearing track, Track 1, which includes both pre-filed initial and rebuttal testimony. *See* [*Federal Register* notice announcing final procedures]. This default hearing track will be the hearing track for this proceeding. {*If the Commission decides to exclude written rebuttal,*

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[8] For example, the presiding officer may make a minor adjustment to a milestone to avoid delay that would occur if the milestone fell on a weekend or holiday (e.g., reducing the due date for initial testimony from 30 days to 29 days because the 30th day falls on a Saturday).

then replace the previous sentence with the following: However, the general ITAAC hearing procedures acknowledge our authority to exclude written rebuttal filings in an individual proceeding. *See* [*Federal Register* notice announcing final procedures]. For the following reasons, we have decided to exclude written rebuttal in this proceeding. [Commission states the bases for excluding written rebuttal.] Therefore, this proceeding will use the hearing track without written rebuttal, which is called Track 2.}

[If the Commission modifies the dates in the general hearing track schedule, the Commission explains the basis for these modifications.]

The schedule below presumes that the oral hearing will take only one day. However, if it appears to the presiding officer that the oral hearing will take longer than one day, the presiding officer is expected to modify the schedule accordingly to ensure that the initial decision is issued by the strict deadline. We expect the presiding officer to consider and discuss such adjustments during the prehearing conference.

Event	**Target Date**	**Target Date**	**Target Date Type**
	Track 1[9]	*Track 2*	
Prehearing Conference	Within 7 days of grant of hearing request	Within 7 days of grant of hearing request	Milestone
Scheduling Order	Within 3 days of prehearing conference	Within 3 days of prehearing conference	Milestone
Document Disclosures; Identification of Witnesses; and NRC Staff Informs the Presiding Officer and Parties of Whether the Staff Will Participate as a Party	15 days after grant of hearing request	15 days after grant of hearing request	Default Deadline
Pre-filed Initial Testimony	30 (+/- 5)[10] days after grant of hearing request	30 (+/- 5) after grant of hearing request	Milestone
Pre-filed Rebuttal Testimony	14 days after initial testimony	No rebuttal	Milestone
Proposed Questions; Motions for Cross-Examination/ Cross-Examination Plans	7 days after rebuttal testimony	7 days after initial testimony	Milestone
Answers to Motions for Cross-Examination	5 days after motion for cross-examination OR oral answer to motion presented just prior to the beginning of the hearing	5 days after motion for cross-examination OR oral answer to motion presented just prior to the beginning of the hearing	Milestone
Oral Hearing	15 days after rebuttal testimony	15 days after initial testimony	Milestone
Joint Transcript Corrections	7 days after hearing	7 days after hearing	Milestone
Findings (if needed)	15 days after hearing or such other time as the presiding officer directs	15 days after hearing or such other time as the presiding officer directs	Milestone
Initial Decision	30 days after hearing	30 days after hearing	Strict Deadline

<[9] *Only one column—either the Track 1 or Track 2 column—will be included in this table in the case-specific order issued by the Commission setting forth the procedures for the hearing, depending on which Track is used.*>

<[10] *The Commission may add or subtract up to 5 days depending on the number and complexity of contested issues.*>

III. HEARING PROCEDURES

The procedures set forth in this order are exclusive—in other words, no procedures other than those stated in this order apply to the proceeding on this/these contention(s). Thus, if a provision of 10 C.F.R. Part 2 is not expressly referenced in this order, then it does not apply to this proceeding. Except as otherwise noted in this order, a licensing board or a single legal judge may not alter these hearing procedures.[11] As used in this order, the term "petitioner" refers to any person who (1) is contemplating the filing of a hearing request, (2) has filed a hearing request but is not admitted as a party to this proceeding, or (3) has had a hearing request granted.

A. Briefing of Legal Issues in Filings

In order to expedite the proceeding and ensure sound decision making by the presiding officer, participants must fully brief all relevant legal issues in their filings.

B. General Motions

To accommodate the expedited timeline for the hearing, the time period for filing and responding to motions must be shortened from the time periods set forth in Subpart C. Therefore, all motions, except for motions for leave to file new or amended contentions or claims of incompleteness filed after the deadline, shall be filed within 7 days after the occurrence or circumstance from which the motion arises, or earlier, as prescribed by the presiding officer. Answers to motions shall be filed within 7 days after service of the motion, or earlier, as prescribed by the presiding officer. Except for the filing deadlines, motions and answers shall otherwise conform to the requirements of 10 C.F.R. § 2.323(a) through (d). The provisions of 10 C.F.R. § 2.323(g) and (h) apply to this proceeding.

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[11] *See* 10 C.F.R. § 2.310(j) (providing that the procedures for an ITAAC hearing will be designated by the Commission in each proceeding).

C. Motions for Extension of Time[12]

1. Except as otherwise provided, the presiding officer may, for good cause shown, extend the time fixed or the period of time prescribed for an act that is required or allowed to be done at or within a specified time. A showing of good cause must be based on an event occurring before the deadline in question.

2. When determining whether the requesting participant has demonstrated good cause, the presiding officer shall take into account the factors in 10 C.F.R. § 2.334(b):

   a. Whether the requesting participant has exercised due diligence to adhere to the schedule;

   b. Whether the requested change is the result of unavoidable circumstances; and

   c. Whether the other participants have agreed to the change and the overall effect of the change on the schedule of the case.

3. In furtherance of the statutory direction regarding the expeditious completion of the hearing, "good cause" is to be interpreted strictly, and a showing of "unavoidable and extreme circumstances" is required for any extension, no matter how minor. Because good cause will be interpreted strictly, meritorious motions will likely be based on events outside the participant's control.

4. Motions for extension of time shall be filed as soon as possible, but no later than 3 days before the deadline, with one limited exception. If the participant is unable to file an extension request by 3 days before the deadline, then the

[12] This section does not apply to changes to the default deadlines and milestones in the table above that are made by the presiding officer when setting the initial schedule for the hearing. However, once the presiding officer issues the initial scheduling order, any request to extend the deadlines in the scheduling order will be subject to the requirements of this section.

participant must (1) file its request as soon as possible thereafter, (2) demonstrate that unavoidable and extreme circumstances prevented the participant from filing its extension request by 3 days before the deadline, and (3) demonstrate that the participant filed its extension request as soon as possible thereafter.[13]

D. Motions/Petitions for Reconsideration and Motions for Clarification

Motions for reconsideration are governed by 10 C.F.R. § 2.323(e), except that the motion must be filed within 7 days of the action for which reconsideration is requested and the answer is due within 7 days of service of the motion. Petitions for reconsideration are governed by 10 C.F.R. § 2.345, except that the petition must be filed within 7 days of the date of the decision and the answer is due within 7 days of service of the petition. In addition, motions and petitions for reconsideration are only allowed for a presiding officer's initial decision or a Commission decision on appeal of a presiding officer's initial decision. Reconsideration is allowed in these narrow instances because these are the most important decisions in the proceeding and motions/petitions for reconsideration of these decisions do not prevent them from taking effect. Reconsideration is not permitted for other decisions because (1) reconsideration is unlikely to be necessary for other decisions, which are interlocutory in nature, (2) the resources necessary to prepare, review, and rule on requests for reconsideration would take time away from preparing for the hearing, (3) participants who disagree with an order of the presiding officer may seek redress through the process for appeals and petitions for review, and (4) the appellate process will not cause undue delay given the expedited nature of the proceeding. Motions for clarification are allowed for these other decisions, but to prevent

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[13] Consistent with practice under 10 C.F.R. § 2.307, a motion for extension of time might be filed shortly after a deadline has passed, e.g., an unanticipated event on the filing deadline prevented the participant from filing. *See* Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,571 (Aug. 3, 2012) (final rule).

them from becoming de facto motions for reconsideration, motions for clarification will be limited to ambiguities in a presiding officer order. In addition, a motion for clarification must explain the basis for the perceived ambiguity and may offer possible interpretations of the purportedly ambiguous language. Finally, if a participant perceives a clear and material error or simple misunderstanding in the presiding officer's decision, the participant may request a conference call to discuss the issue.[14] Such request should be made by email to the presiding officer's law clerk, and the other participants' representatives should be copied on this email. If the presiding officer decides that no conference call is necessary, then the participants' and the presiding officer's resources will not have been expended. If a conference call is held, the resource expenditure should be minimal and any error or misunderstanding can be more quickly rectified than through a formal request for reconsideration.

E. Motions to Dismiss/Motions for Summary Disposition

Other than a joint motion to dismiss supported by all of the parties, motions to dismiss and motions for summary disposition are not permitted. The time frame for the hearing is already time limited, and the resources necessary to prepare, review, and rule on a motion to dismiss or motion for summary disposition would take time away from preparing for the hearing and likely would not outweigh the potential for error should it later be decided on appeal that a hearing was warranted.

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[14] However, a participant may not request a conference call for aspects of the proceeding over which the Commission, itself, is presiding because such an informal process would be impractical since Commission action is subject to formal processes (some of which are required by law). In addition, the potential need for such an informal process is less likely to arise in the portions of the ITAAC hearing over which the Commission will preside.

F. Disclosures/Presiding Officer Notifications/Role of the NRC Staff

1. *Disclosures*

a. The disclosure requirements in this proceeding, which are set forth in Section III.F.1.b through h, are for the most part adopted from 10 C.F.R. § 2.336, with limited changes tailored to this proceeding. These procedures are well established in NRC adjudicatory practice, and they ensure that all of the parties will have a fair opportunity to obtain information relevant to the contested issues in the proceeding.[15] The disclosure requirements in this proceeding differ from § 2.336 in the following respects:

(i) NRC staff disclosures are based on the provisions of § 2.336(a), as modified for this proceeding, rather than on § 2.336(b). We have chosen to use § 2.336(a), instead of § 2.336(b), as the basis for the NRC staff's disclosure requirements because (1) the categories of documents covered by § 2.336(a) and § 2.336(b) are likely to be the same in the ITAAC hearing context, and (2) it is reasonable in an ITAAC hearing to impose a witness identification requirement on the NRC staff with its initial disclosures since initial testimony is due soon after initial disclosures.

(ii) The witness identification requirement is clarified to explicitly include potential witnesses whose knowledge provides support for a party's claims or positions.

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[15] For further discussion of the Commission's choice to limit disclosures to those provided pursuant to 10 C.F.R. § 2.336, see [*Federal Register* notice announcing final procedures and providing responses to comments.]

(iii) The privilege log requirement has been simplified to reduce burdens on the parties while focusing on identifying documents that are more likely to have a bearing on the contested issues (i.e., documents withheld because they contain security-related Sensitive Unclassified Non-Safeguards Information (SUNSI), Safeguards Information (SGI), or proprietary information).

(iv) These procedures explicitly provide that the parties may agree to change the scope of documents subject to the disclosures requirement and the privilege log requirement. Such agreements are common in NRC practice and serve to reduce the burden on the parties and to narrow disclosures to the documents most relevant to the proceeding.

(v) Initial disclosures in this proceeding are due 15 days from the order granting the hearing request rather than the 30 days provided by § 2.336(a). This reduction in time is necessary to support the expedited ITAAC hearing schedule.

(vi) Disclosure updates will be due every 14 days (instead of monthly) to support the expedited ITAAC hearing schedule.

b. Within 15 days of the date of this order, all parties, including the NRC staff, shall, without further order or request from any party, disclose and provide:

(i) The name, and, if known, the address and telephone number of any person, including any expert, upon whose opinion or knowledge the party bases its claims and contentions and may rely upon as a witness, and a copy of the analysis or other authority upon which that person bases his or her opinion;

(ii) A copy of all documents and data compilations in the possession, custody, or control of the party that are relevant to the contentions and for which there is no claim of privilege or protected status;

(iii) A copy of all tangible things (e.g., books, publications and treatises) in the possession, custody or control of the party that are relevant to the contention and for which there is no claim of privilege or protected status; and

(iv) A list of documents otherwise required to be disclosed that are being withheld on the basis that they contain security-related SUNSI, SGI, or proprietary information.[16] Privilege logs will be viewed as sufficient if they specifically identify each document being withheld (including the date, title, and a brief description of the document) and the basis for withholding (e.g., "contains SGI").

(v) The parties may jointly agree to exclude certain classes of documents (such as "drafts") from the required disclosures or may jointly agree to change the scope of documents subject to the privilege log requirement. In addition, the presiding officer may change the scope of documents subject to the privilege log requirement for a case-specific reason. Such matters should be discussed at the prehearing conference.

c. In recognition of the time-sensitive nature of this proceeding, and to ensure that disclosures are timely made, each party and the NRC staff

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[16] If a document subject to the attorney-client privilege also contains proprietary information, it would not need to be included in the privilege log because it can be withheld on the basis of the attorney-client privilege.

shall make its disclosures in a manner calculated to reach the other parties by the date that disclosures are due using the fastest means possible, preferably electronically, by providing an ADAMS accession number or a working hyperlink, or by emailing the document, as applicable. For documents that are too large for email service but which can be segmented into smaller documents that can be emailed, segmentation must be pursued if this is necessary to have the document delivered by the date that disclosures are due. If the disclosures cannot be sent electronically, the parties shall either fax them or send them via overnight mail by the date that disclosures are due. The parties should confer with each other to determine which method of expedited delivery is preferred/most practicable.

d. When any document, data compilation, or other tangible thing that must be disclosed is publicly available from ADAMS or a working hyperlink, including the NRC Web site at *http://www.nrc.gov*, a sufficient disclosure would be the hyperlink or ADAMS accession number, the title, and a page reference to the relevant document, data compilation, or tangible thing.

e. Documents delivered to other parties must be in electronic form in accordance with the [current E-Filing guidance]. An exemption from the requirement to provide an electronic document can be sought from the presiding officer using the procedures of 10 C.F.R. § 2.302(g).

f. Each party and the NRC staff shall make its initial disclosures based on the information and documentation then reasonably available to it. A party, including the NRC staff, is not excused from making the required disclosures because it has not fully completed its investigation of the case, it challenges the sufficiency of another entity's disclosures, or

another entity has not yet made its disclosures. All disclosures under this section must be accompanied by a certification (by sworn affidavit) that all relevant materials required by this section have been disclosed, and that the disclosures are accurate and complete as of the date of the certification.

g. The duty of disclosure under this section is continuing. Parties must update their disclosures every 14 days after initial disclosures. The disclosure update shall be limited to documents subject to disclosure under this section and does not need to include documents that are developed, obtained, or discovered during the 7 days before the due date. Disclosure updates shall include any documents subject to disclosure that were not included in any previous disclosure update. If there have been no changes since the previous disclosure update, the party shall submit a notice to that effect. The duty to update disclosures relevant to an admitted contention ends when the presiding officer issues a decision resolving the contention, or at such other time as may be specified by the presiding officer.

h. 10 C.F.R. § 2.336(e) and (g) apply without modification.

2. *Hearing File*

a. 10 C.F.R. § 2.1203 is not applicable to this proceeding.

3. *Requests for Access to SUNSI or SGI*

a. Where an admitted party seeks access to SUNSI or SGI relevant to the admitted contentions, the 10 C.F.R. § 2.336 disclosures process described above will be used. As part of the disclosures process, a party seeking SUNSI or SGI related to an admitted contention would first seek access from the party possessing the SUNSI or SGI. Any disputes

among the parties over access to SUNSI would be resolved by the presiding officer, and any disputes over access to SGI would be resolved in accordance with 10 C.F.R. § 2.336(f), as modified below.

i. A challenge under 10 C.F.R. § 2.336(f)(1)(iii)(B) to the completeness and accuracy of the records relied on by the NRC Office of Administration in making its initial adverse trustworthiness and reliability determination must be submitted within 7 days of receipt of the records from the Office of Administration.[17]

ii. A request for review under 10 C.F.R. § 2.336(f)(1)(iv) of a final adverse Office of Administration determination on trustworthiness and reliability for access to SGI must be filed with the Chief Administrative Judge within 7 days of receipt of the adverse determination, and the NRC staff may file a response within 7 days of receipt of the request for review.[18]

iii. For a request for review under § 2.336(f)(1)(iv) of an adverse trustworthiness and reliability determination by the Office of Administration, the Chief Administrative Judge will select a single

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[17] The time period for a challenge under 10 C.F.R. § 2.336(f)(1)(iii)(B) has been reduced from 10 days to 7 days in order to expedite the proceeding and to be consistent with the 7-day period given in this order for interlocutory appeals of presiding officer determinations on access to SUNSI or SGI.

[18] The time periods for filing requests for review (and responses thereto) under 10 C.F.R. § 2.336(f)(1)(iv) have been reduced to 7 days in order to expedite the proceeding and to be consistent with the 7-day period given in this order for interlocutory appeals (and answers thereto) of presiding officer determinations on access to SUNSI or SGI. Other than the time periods for filing, requests for review of final adverse Office of Administration trustworthiness and reliability determinations (and NRC staff responses thereto) must comply with 10 C.F.R. § 2.336(f)(1)(iv).

legal judge (assisted as appropriate by technical advisors) to rule on the request.

iv. In cases where there is a dispute over access to SUNSI or SGI, the presiding officer ruling on the dispute will also be the presiding officer responsible for the issuance of protective orders and other related matters.

v. In cases where there is no dispute over access to SUNSI or SGI, the presiding officer for protective orders or other related matters will be the presiding officer for the admitted contention.

b. Where a petitioner seeks access to SUNSI or SGI or where an admitted party seeks access to SUNSI or SGI that is not relevant to the admitted contentions, the "Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation" (SUNSI-SGI Access Order) that was issued with the notice of intended operation applies, subject to the following clarifications:[19]

i. The timeliness standard for requests for access to SUNSI or SGI is the later of (a) 10 days from the date that the existence of the SUNSI or SGI document becomes public information, or (b) 10

[19] In other proceedings, the provisions of the SUNSI-SGI Access Order apply to petitioners not yet admitted as parties, as explained in *South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-24, 72 NRC 451, 461-62 (2010). However, an ITAAC hearing differs from most NRC proceedings because there will be no hearing file. The hearing file provides information that may be used to support new contentions. Because the disclosures process in an ITAAC hearing does not allow parties to access SUNSI or SGI for the purpose of formulating contentions unrelated to admitted contentions, it makes sense to apply the provisions of the SUNSI-SGI Access Order to parties.

days from the availability of new information giving rise to the need for the SUNSI or SGI to formulate the contention.

ii. Any contentions in this proceeding that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 20 days after the requestor receives access to that information. Any answers to such contentions must be filed within 14 days thereafter.

iii. Any requests for review of NRC staff determinations on access to SUNSI or SGI must be filed in accordance with the SUNSI-SGI Access Order. The SUNSI-SGI Access Order shall govern the selection of the presiding officer for requests for review and for protective orders and other related matters.

c. If a participant is granted access to SUNSI or SGI, the approved protective order templates announced at [citation to document announcing the availability of approved templates] should serve as a basis for a case-specific protective order, as appropriate.

4. *No Other Discovery Permitted*

a. We expect that the required disclosures, pre-filed testimony and evidence, and the opportunity to submit written questions to the presiding officer will provide a sufficient foundation for the parties' positions and the presiding officer's ruling in this proceeding, as they do in other informal NRC adjudications. We find that any information that might be gained by conducting formal discovery using the procedures in 10 C.F.R. Part 2, Subpart G likely would not justify the time and resources necessary to gain that information, particularly considering the limited time frame in which to conduct the proceeding. Accordingly, the disclosures set forth

above are the sole means of discovery in this proceeding. Depositions, interrogatories, and other forms of discovery provided under 10 C.F.R. Part 2, Subpart G are not permitted.

5. *Notification of Relevant New Developments in the Proceeding*

   a. Given the potential for circumstances to change over the course of this unique proceeding, we remind the participants of their continuing obligation to notify the other participants, the presiding officer, and the Commission of relevant new developments in the proceeding.[20]

6. *Additional Notification Procedures for Admitted Contentions*

   a. The AEA and NRC regulations permit a hearing to go forward on the predictive question of whether one or more of the acceptance criteria in the combined license "will not be" met.[21] Additionally, a licensee might choose to re-perform an inspection, test, or analysis for ITAAC maintenance or to dispute an admitted contention.[22] In addition, events subsequent to the performance of an ITAAC might be relevant to the continued validity of the earlier ITAAC performance. As a consequence, it is possible for the factual predicate of an admitted contention to change over the course of this proceeding, thus impacting the contention or the hearing schedule. To account for this possibility, and to ensure that the

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[20] *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 470 (2006).

[21] *See* AEA § 189a.(1)(B), 42 U.S.C. § 2239(a)(1)(B); 10 C.F.R. §§ 2.309(f)(1)(vii), 2.340(c).

[22] The AEA provisions on combined licenses and ITAAC were added by the Energy Policy Act of 1992 (EPAct), Public Law Number 102-486. A suggestion made in the legislative history of the EPAct is that re-performing the ITAAC would be a simpler way to resolve disputes involving competing eyewitness testimony. 138 Cong. Rec. S1143-44 (Feb. 6, 1992) (statement of Sen. Johnston). In addition, ITAAC re-performance might occur as part of the licensee's maintenance of the ITAAC, and might also result in an ITAAC post-closure notification.

other parties, the presiding officer, and the Commission are timely notified of a change in circumstances, we establish the following additional procedures for contentions that might be affected by such an event.

b. If the licensee submits an ITAAC closure notification (10 C.F.R. § 52.99(c)(1)) or an ITAAC post-closure notification (10 C.F.R. § 52.99(c)(2)) for an admitted contention, then the licensee also shall notify the presiding officer (or the Commission, if the matter is before the Commission) and the parties within one day of the licensee submitting the ITAAC notification to the NRC. The notice shall state the effect that the ITAAC notification has on the proceeding, including the effect of the notification on the evidentiary record, and whether the notification renders moot, or otherwise resolves, the admitted contention(s). This notice requirement applies as long as there is a contested proceeding in existence on the relevant ITAAC (including any period in which an appeal of an initial decision may be filed or during the consideration of an appeal if an appeal is filed). Within 7 days of service of the licensee's notice, the other parties shall file an answer providing their views on the effect that the ITAAC notification has on the proceeding, including the effect of the notification on the evidentiary record, and whether the notification renders moot, or otherwise resolves the admitted contention(s). However, the petitioner is not required in this 7-day time frame to address whether it intends to file a new or amended contention. In the interest of timeliness, the presiding officer may, in its discretion, take action to determine the notification's effect on the proceeding (e.g., hold a prehearing conference, set an alternate briefing schedule) before the 7-day deadline for answers.

c. ITAAC re-performance: If the licensee re-performs the ITAAC associated with an admitted contention, then information and documents concerning this re-performance are subject to the standard disclosure and notification requirements, including the mandatory disclosures obligation, the ITAAC post-closure notification requirement in 10 C.F.R. § 52.99(c)(2), and the licensee's continuing obligation to notify the other parties, the presiding officer, and the Commission of relevant new developments in the proceeding. If the licensee notifies the presiding officer (or the Commission, if the matter is before the Commission) and the parties of information concerning re-performance of an ITAAC, then the notice shall state the licensee's view of the effect that the ITAAC re-performance has on the proceeding, including the effect of the notification on the evidentiary record, and whether, in the licensee's view, the notification renders moot or otherwise resolves the admitted contention(s). Within 7 days of service of the licensee's notice, the other parties shall file an answer providing their views on the effect that the ITAAC re-performance has on the proceeding, including the effect of the notification on the evidentiary record, and whether the notification renders moot, or otherwise resolves the admitted contention(s). However, the petitioner is not required in this 7-day time frame to address whether it intends to file a new or amended contention. In the interest of timeliness, the presiding officer may, in its discretion, take action to determine the notification's effect on the proceeding (e.g., hold a prehearing conference, set an alternate briefing schedule) before the 7-day deadline for answers.

7. *Additional Notification Procedures for Pending Contentions*

   a. For reasons similar to those described above in the context of imposing additional notification procedures for admitted contentions, the factual predicate of a pending contention may change between submission of the contention and the ruling on its admissibility. Therefore, we are establishing the following additional notification procedures for pending contentions to ensure that the participants, the presiding officer, and the Commission are timely notified of a relevant change in circumstances.

   b. To ensure that the participants, the presiding officer, and the Commission stay fully informed of the status of challenged ITAAC as a proposed contention is being considered, any answers to the proposed contention from the NRC staff and the licensee must discuss any changes in the status of challenged ITAAC.

   c. After answers are filed, the participants must notify the other participants, the presiding officer, and the Commission in a timely fashion as to any changes in the status of a challenged ITAAC up to the time that the presiding officer rules on the admissibility of the contention. This would include information related to re-performance of an ITAAC that might bear on the proposed contention. In addition, after answers are filed, the licensee must notify the other participants, the presiding officer, and the Commission of the submission of any ITAAC closure notification or ITAAC post-closure notification for a challenged ITAAC. This notice must be filed within one day of the submission of the ITAAC closure notification or ITAAC post-closure notification to the NRC.

8. *Role of the NRC staff*

   a. 10 C.F.R. § 2.1202(a) applies to this proceeding.

b. The NRC staff is not required to be a party to the proceeding unless the presiding officer determines that the resolution of any issue in the proceeding would be aided materially by the NRC staff's participation in the proceeding as a party and orders the NRC staff to participate as a party for the identified issue. In the event that the presiding officer determines that the NRC staff's participation is necessary, the presiding officer shall issue an order identifying the issue(s) on which the NRC staff is to participate as well as setting forth the basis for the determination that NRC staff participation will materially aid in resolution of the issue(s).

c. Within 15 days of the date of this order, the NRC staff shall notify the presiding officer and the parties whether it desires to participate as a party and identify the contentions on which it wishes to participate as a party. If the NRC staff desires to participate as a party thereafter, the NRC staff shall notify the presiding officer and the parties, identify the contentions on which it wishes to participate as a party, and make the disclosures required above at the same time.

d. The NRC staff shall have all the rights and responsibilities of a party with respect to the admitted contentions on which the NRC staff will participate.

a. {*In lieu of the above three paragraphs, the Commission may make the following determination on a case-specific basis:* We have determined that the NRC staff's participation in this matter is essential to a complete record. Therefore, the NRC staff shall participate as a party to the proceeding and shall have all the rights and responsibilities of a party with respect to the admitted contention[s].}

G. Hearing Requests, Intervention Petitions, and Motions for Leave to File New or Amended Contentions or Claims of Incompleteness Filed After the Original Deadline

The requirements set forth below apply to hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed by petitioners after the original deadline. Hearing requests that are filed by the licensee after the original deadline, and any answers thereto, are subject to the requirements in the "Order Imposing Additional Procedures for ITAAC Hearings Before a Commission Ruling on the Hearing Request" that was issued with the notice of intended operation.

1. *Presiding Officer*: Hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness after the original deadline must be filed with the Commission.

   a. The Commission will rule upon all hearing requests, intervention petitions, and motions for leave to file new contentions or claims of incompleteness that are filed after the original deadline. If we grant the hearing request, intervention petition, or motion for leave to file new contentions, we will designate the hearing procedures and schedule for the newly-admitted contentions and will determine whether there will be adequate protection during interim operation with respect to the newly-admitted contentions. If we determine that a new or amended claim of incompleteness demonstrates a need for additional information in accordance with 10 C.F.R. § 2.309(f)(1)(vii), we will designate separate procedures for resolving the claim.

   b. For motions for leave to file amended contentions, the Commission may rule on the amended contentions or may delegate rulings on such contentions to a licensing board or a single legal judge (assisted as appropriate by technical advisors). For amended contentions, a

Commission ruling may not be necessary to lend predictability to the hearing process because we will have provided guidance on the admissibility of the relevant issues when we ruled on the original contention.

i. If we rule on the admissibility of the amended contention, we may revise the existing hearing schedule as appropriate.

ii. If we delegate a contention admissibility ruling and the presiding officer admits the amended contention, then we will still make the adequate protection determination for interim operation. In addition, the Commission-imposed procedures governing the adjudication of the original contention also apply to the amended contention if admitted by the presiding officer. Furthermore, the deadline for an initial decision on the amended contention (which is a strict deadline) is the same date as the deadline for an initial decision on the original contention.[23]

2. *Good Cause Required, as Defined in 10 C.F.R. § 2.309(c)*

a. 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 will not be entertained absent a determination by the Commission or the presiding officer that the participant has demonstrated good cause by showing that:

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[23] The presiding officer should strive to meet the strict deadline, but if unavoidable and extreme circumstances require an extension of the strict deadline, then the presiding officer may extend that deadline in accordance with the procedures set forth in Section II, Hearing Schedule, of this order.

(i) The information upon which the filing is based was not previously available;

(ii) The information upon which the filing is based is materially different from information previously available; and

(iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information. To be deemed timely, hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the original deadline must be filed within 20 days of the availability of the information upon which the filing is based. To be deemed timely, motions for leave to file new or amended claims of incompleteness under 10 C.F.R. § 2.309(f)(1)(vii) must be filed within 20 days of the date that the challenged 10 C.F.R. § 52.99(c) notification (or a redacted version thereof) becomes available to the public.

3. *Additional Requirements*

a. Hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness filed after the original deadline must meet the requirements of 10 C.F.R. § 2.309(f)(1)(i) through (v) and 10 C.F.R. § 2.309(f)(1)(vii). The requirements in 10 C.F.R. § 2.309(f)(1)(vi) do not apply to this proceeding.

b. The requirements of Sections [VI, VIII.B.5.g and VIII.C.5] of the [XYZ] design certification rule continue to apply to this proceeding.

c. If the participant has not already satisfied the requirements for standing, the participant must demonstrate that it meets the requirements of 10 C.F.R. § 2.309(d). Additionally, the provisions of 10 C.F.R. § 2.309(h) apply to this proceeding. However, discretionary intervention pursuant to

§ 2.309(e) does not apply to this proceeding because § 2.309(a) requires a showing of standing and contention admissibility in an ITAAC hearing, and § 2.309(a) does not provide a discretionary intervention exception for hearings under 10 CFR 52.103 as it provides for other proceedings.

d. Any declarations of eyewitnesses or expert witnesses offered in support of contention admissibility need to be signed by the eyewitness or expert witness in accordance with 10 C.F.R. § 2.304(d). If declarations are not signed, their content will be considered, but they will not be accorded the weight of an eyewitness or an expert witness, as applicable, with respect to satisfying the *prima facie* showing required by 10 C.F.R. § 2.309(f)(1)(vii). The purpose of this provision is to ensure that a position that is purportedly supported by an expert witness or an eyewitness is actually supported by that witness.

e. If a petitioner submitting a hearing request, intervention petition, or motion for leave to file new or amended contentions or claims of incompleteness after the deadline believes that some aspect of operation must be stayed until action is taken in the hearing process, then that petitioner has the burden of submitting its stay request simultaneously with the hearing request, intervention petition, or motion for leave to file new or amended contentions or claims of incompleteness. If the petitioner does not include a stay request with its pleading, the petitioner will have constructively waived its right to request a stay at a later time.

4. *Consultation on Claims of Incompleteness*: To expedite the proceeding and prevent the unnecessary expenditure of resources that might occur from litigating claims of incompleteness that could have been resolved through negotiation, we are requiring consultation between the petitioner and the licensee regarding

information purportedly missing from the licensee's 10 C.F.R. § 52.99(c) ITAAC notifications. This consultation must occur prior to the filing of any claim of incompleteness and must be in accordance with the provisions set forth below.

a. The petitioner must make a sincere effort to timely initiate and meaningfully engage in consultation with the licensee, and the licensee must make a sincere effort to listen to and respond to the petitioner. Both the petitioner and the licensee must make sincere efforts to resolve the petitioner's request and must complete consultations (and any delivery of documents) with due dispatch.

b. The petitioner must initiate consultation with the licensee regarding any claims of incompleteness within 7 days of the notification (or a redacted version thereof) becoming available to the public.

c. Within one day of the licensee discovering that consultation on a claim of incompleteness involves SUNSI or SGI, the licensee must inform the petitioner of this fact. Within one day of the licensee discovering that security-related SUNSI or SGI is involved, the licensee must also inform the NRC staff with a brief explanation of the situation.

d. If consultation on a claim of incompleteness involves security-related SUNSI or SGI, then the licensee shall not provide the security-related SUNSI or SGI unless and until the NRC has determined that such access is appropriate. Also, if SGI is involved and the petitioner continues to seek access to it, then, in order to expedite the proceeding, the petitioner must complete and submit to the NRC the background check forms and fee in accordance with Sections D.(4)(b) though D.(4)(e) of the SUNSI-SGI Access Order issued with the notice of intended operation. The background check forms and fee must be submitted within 5 days of

notice from the licensee that SGI is involved. Petitioners are expected to have forms completed prior to this date to allow for expeditious submission of the required forms and fee. The petitioner should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC.

e. In determining whether access to SUNSI or SGI is appropriate as part of the consultation process, the NRC staff shall employ the standards in Section F of the SUNSI-SGI Access Order with respect to likelihood of establishing standing (if standing has not already been established), need for SUNSI, and need to know for SGI. For access to SGI, the NRC Office of Administration will also determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 C.F.R. § 73.22(b). Before making an adverse trustworthiness and reliability determination, the NRC Office of Administration will employ the process set forth in Section K.(2) of the SUNSI-SGI Access Order. If the NRC Office of Administration makes a final adverse determination on trustworthiness and reliability, any request for review of this determination must be filed with the Chief Administrative Judge within 7 days of receipt of the adverse determination, any NRC staff response must be filed within 7 days of receipt of the request for review, and such requests for review shall be resolved in accordance with Section K.(4) of the SUNSI-SGI Access Order.[24]

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[24] If consultations are not successful because the NRC staff makes an adverse determination on the petitioner's likelihood of establishing standing, need for SUNSI, or need to know for SGI, (continued . . .)

f. If access to SUNSI or SGI is granted, the presiding officer for any non-disclosure agreement or affidavit, or protective order will be designated in accordance with Sections G and H of the SUNSI-SGI Access Order. The approved protective order templates announced at [citation to document announcing the availability of approved templates] should serve as a basis for case-specific protective orders, as appropriate. Release and storage of SGI shall be in accordance with Section I of the SUNSI-SGI Access Order.

g. Any contention based on additional information provided to the petitioner by the licensee through consultation on claims of incompleteness will be due within 20 days of the petitioner's access to the additional information.

h. If agreement is not reached before the deadline for filing the claim of incompleteness, then the petitioner must file the claim of incompleteness by the required deadline.

i. If a claim of incompleteness is filed, the petitioner must include with its claim of incompleteness a certification by the attorney or representative of the petitioner that the petitioner (1) complied with the timeliness requirements for consultation and (2) made a sincere effort to meaningfully engage in consultation with the licensee on access to the purportedly missing information prior to filing the claim of incompleteness. This certification may include any additional discussion the petitioner believes is necessary to explain the situation.

(. . . continued)
then the issues of standing, need for SUNSI, and need to know for SGI (as applicable) will be resolved in a ruling on the claim of incompleteness if the petitioner decides to file a claim of incompleteness.

j. A claim of incompleteness involving SUNSI or SGI must (1) specifically identify the extent to which the petitioner believes that any requested information might be SUNSI or SGI, and (2) include a showing of the need for the information (for access to SUNSI) or need to know (for access to SGI). The showing of need for SUNSI must satisfy the standard in Section D.(3) of the SUNSI-SGI Access Order, and the showing of need to know for SGI must satisfy the standard in Section D.(4)(a) of the SUNSI-SGI Access Order. A claim of incompleteness involving SGI must also state that the required forms and fee for the background check have been submitted to the NRC in accordance with Sections D.(4)(b) through D.(4)(e) of the SUNSI-SGI Access Order.

k. A licensee answer to a claim of incompleteness must include a certification by the licensee's attorney or representative that the licensee (1) complied with the timeliness requirements for consultation and (2) made a sincere effort to listen to and respond to the petitioner and to resolve the petitioner's request prior to the filing of the claim of incompleteness. This certification may include any additional discussion that the licensee believes is necessary to explain the situation. An answer from the licensee must also specifically identify the extent to which the licensee believes that any requested information might be SUNSI or SGI.

l. In determining whether a claim of incompleteness is valid, we will consider all of the information available to the petitioner, including any information provided by the licensee. We will also consider whether the participants have discharged their consultation obligations in good faith.

5. *Effect of Hearing Requests, Intervention Petitions, and New or Amended Contentions Filed After the Original Deadline on Interim Operation*

a. If the proponent of a hearing request, intervention petition, or new or amended contention filed after the original deadline argues that the information raised in the new or amended contention, intervention petition, or hearing request will affect adequate protection during interim operation, then, in order for its views to be considered by the Commission before we make the interim operation determination, the proponent shall provide its views on this issue, including the time periods and modes of operation in which the adequate protection concern arises, at the same time it submits the hearing request, intervention petition, or motion for leave to file a new or amended contention.[25]

b. Because the Commission's interim operation determination is a technical finding, a proponent's views regarding adequate protection during interim operation must be supported with alleged facts or expert opinion, including references to the specific sources and documents on which it relies. Any expert witness or eyewitness declarations, including a statement of the qualifications and experience of the expert, must be signed in accordance with 10 C.F.R. § 2.304(d). The probative value that the NRC accords to a proponent's position on adequate protection during interim operation will depend on the level and specificity of support

[25] A claim of incompleteness does not bear on interim operation because interim operation is intended to address whether operation shall be allowed notwithstanding the petitioner's *prima facie* showing, while a claim of incompleteness is premised on the petitioner's inability to make a *prima facie* showing.

provided by the proponent, including the qualifications and experience of each expert providing expert opinion.

6. *Answers*

a. Answers to hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness filed after the original deadline shall be filed within 14 days of service of the hearing request, intervention petition, or motion for leave to file a new or amended contention or claim of incompleteness.

b. Any answers to the proffered contention from the NRC staff and the licensee shall include their views regarding the impact of the hearing request, intervention petition, or new or amended contention(s) on adequate protection during interim operation, including the licensee's plans, if any, to propose mitigation measures to ensure adequate protection during interim operation. NRC staff filings addressing interim operation should address any terms and conditions that should be imposed to assure adequate protection during the interim period. Because the Commission's interim operation determination is a technical finding, the NRC staff's and the licensee's views regarding adequate protection during interim operation must be supported with alleged facts or expert opinion, including references to the specific sources and documents on which they rely. Any expert witness or eyewitness declarations, including a statement of the qualifications and experience of the expert, must be signed in accordance with 10 C.F.R. § 2.304(d). The probative value that the NRC accords to the NRC staff's or the licensee's position on adequate protection during interim operation will depend on

the level and specificity of support provided, including the qualifications and experience of each expert providing expert opinion.

c. Replies to answers are not permitted. If the licensee's answer addresses proposed mitigation measures to assure adequate protection during interim operation, however, the NRC staff and the proponent of the hearing request, intervention petition, or new or amended contention filed after the original deadline may, within 20 days of service of the licensee's answer, file a response that addresses only the effect these proposed mitigation measures have on adequate protection during interim operation.[26]

7. *Timing for Decision on Hearing Requests, Intervention Petitions, and Motions for Leave to File New or Amended Contentions or Claims of Incompleteness Filed After the Original Deadline*

a. Unless we extend the time for our review, we will rule on a hearing request, intervention petition, or motion for leave to file a new or amended contention or claim of incompleteness filed after the original deadline within 30 days of the filing of answers. If a decision on the admissibility of an amended contention is delegated to a licensing board or a single legal judge (assisted as appropriate by technical advisors), we expect the presiding officer to rule on the amended contention(s) within 30 days of the filing of answers. In the event the presiding officer cannot issue its

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[26] This procedure, which is intended to ensure fairness and a sound record for decision, differs from the process for responding to mitigation measures proposed by the licensee in its answer to the original hearing request because of the greater need for expedited decision making for contentions submitted after the original deadline. We intend to make the adequate protection determination for interim operation by scheduled fuel load, if possible. For new issues raised after the original deadline, there is less time to achieve this goal, so an expedited process is necessary.

ruling within 30 days, the presiding officer shall issue a notice advising the Commission and the parties of the expected date of decision.

b. A Commission interim operation determination need not be made in conjunction with a ruling on a hearing request, intervention petition, or new or amended contention.

H. Statements of Position, Testimony, Exhibits, and Oral Hearing

1. *Pre-filed Statements of Position, Testimony, and Evidence*

a. The parties may file initial written statements of position and written testimony with supporting affidavits on the admitted contentions by the date set by the presiding officer.

b. The parties may file written responses and rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants by the date set by the presiding officer. {*If pre-filed rebuttal is not allowed, then replace the previous sentence with "Reserved."*}

c. The parties may file proposed questions for the presiding officer to consider propounding to the persons sponsoring the testimony by the date set by the presiding officer. {*If pre-filed rebuttal is not allowed:* Because pre-filed rebuttal is not allowed, parties may also propose questions for their own witnesses to respond to the other parties' filings.} The presiding officer shall follow the procedures set forth in 10 C.F.R. § 2.1207(a)(3)(iii) for proposed questions. In the sound exercise of its discretion, the presiding officer need not ask all (or any) questions that the parties request the presiding officer to consider propounding to the witnesses.

d. Written statements of position may be filed in the form of proposed findings. This would allow the parties to draft their post-hearing findings of fact and conclusions of law by updating their pre-hearing filings. Also, if the parties choose this option, the presiding officer should consider whether it might be appropriate to dispense with the filing of written findings of fact and conclusions of law after the hearing.

2. *Motions in Limine and Motions to Strike*

a. The admitted contentions are narrowly focused on discrete technical issues, and we expect the parties' evidentiary submissions to be likewise narrowly focused. Given this, and in order to expedite the proceeding, written motions *in limine* or motions to strike are not permitted.[27] The presiding officer is capable of judging the relevance and persuasiveness of the arguments, testimony, and evidence without excluding them from the record, and the parties may address the relevance or admissibility of arguments, testimony, or evidence in their pre- and post-hearing filings, or at the hearing.

3. *Motions for Cross-Examination*

a. By the date set by the presiding officer, a party may file a motion with the presiding officer to permit cross-examination by the party on particular admitted contentions. The motion shall be accompanied by a cross-examination plan containing the information set forth in 10 C.F.R. § 2.1204(b) and the party requesting cross-examination shall follow the procedures described in that section.

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[27] Collectively, written motions *in limine* and motions to strike are written motions to exclude another party's arguments, testimony, or evidence.

b. Written answers to motions for cross-examination are due by the date set by the presiding officer. Alternatively, if travel arrangements for the hearing interfere with the ability of the parties and the presiding officer to file or receive documents, an answer may be delivered orally at the hearing location just prior to the start of the hearing.

c. The due dates for motions for cross-examination and answers thereto, and whether answers to motions for cross-examination will be in written form or delivered orally, shall be addressed by the presiding officer and the parties at the prehearing conference.[28]

d. As provided by 10 C.F.R. § 2.1204(b)(3), the presiding officer shall allow cross-examination by the parties only if the presiding officer determines that it is necessary to ensure the development of an adequate record for decision. The presiding officer shall allow cross-examination upon motion of a party seeking to cross-examine a person providing eyewitness testimony.

4. *Oral Hearing*

a. The oral hearing will be conducted in accordance with 10 C.F.R. § 2.1207(b).

I. Post-Hearing Filings and Initial Decision

1. *Transcript Corrections*

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[28] We contemplate that motions for cross-examination and cross-examination plans will ordinarily be due 7 days after the filing of the rebuttal testimony {*if written rebuttal testimony is not allowed, then replace "rebuttal testimony" with "initial testimony"*}, and any written answers will ordinarily be due 5 days thereafter. Because cross-examination plans are filed non-publicly, answers would only address the public motion, which would likely include less detail. This justifies the shorter deadline for answers and the reasonableness of having answers be delivered orally.

a. The parties shall file joint proposed transcript corrections by the date set by the presiding officer. Because we contemplate that joint transcript corrections will be filed within 7 days after the hearing, transcripts must be sent to the parties on an expedited basis after the hearing.

2. *Closing the Record*

a. After ruling on proposed transcript corrections, the presiding officer shall close the record.

3. *Reopening the Record*

a. The NRC's existing rule in 10 C.F.R. § 2.326 will apply to any effort to reopen the record.

4. *Findings of Fact and Conclusions of Law*

a. No later than 15 days after the hearing or such other time as the presiding officer directs, each party shall file written proposed findings of fact and conclusions of law on the contentions addressed at the hearing that conform to the format requirements in 10 C.F.R. § 2.712(c). The presiding officer, in its discretion, may dispense with proposed findings of fact and conclusions of law for some or all of the hearing issues on its own motion, or upon a joint agreement supported by all of the parties.

5. *Initial Decision*

a. The initial decision shall be issued in accordance with, and is subject to, the provisions of 10 C.F.R. § 2.340(c), (f), and (j), and § 2.1210.[29]

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[29] Also, while 10 C.F.R. § 2.340(j) applies to ITAAC hearings, it "is not intended to be an exhaustive 'roadmap' to a possible 10 CFR 52.103(g) finding that acceptance criteria are met" after a hearing. Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria, 77 Fed. Reg. 51,880, 51,886 (Aug. 28, 2012) (final rule). Thus, there may be situations in which the mechanism and circumstances described by 10 C.F.R. § 2.340(j) are not wholly applicable. For example, if interim operation is allowed, then the § 52.103(g) finding (continued . . .)

b. The initial decision must be issued by [DATE]. This is a strict deadline.

J. Commission Review of Presiding Officer Decisions

1. 10 C.F.R. § 2.311 does not apply to this proceeding, but is replaced by the provisions in Section III.J.2 of this Order. 10 C.F.R. § 2.341 applies with the exception of 10 C.F.R. § 2.341(f). The matters addressed by § 2.341(f) are governed by Sections III.J.2 and III.J.3 of this Order. 10 C.F.R. § 2.1212 applies to this proceeding.

2. *Interlocutory Appeals*

a. Participants or petitioners may appeal to the Commission a presiding officer order with respect to a request for access to SUNSI (including, but not limited to, proprietary, confidential commercial, and security-related information) or SGI. Because of the expedited nature of the proceeding, such an appeal shall be filed within 7 days after service of the order. The appeal shall be initiated by the filing of a notice of appeal and accompanying supporting brief. Any participant or petitioner may file a brief in opposition within 7 days after service of the appeal. The supporting brief and any answer shall conform to the requirements of 10 C.F.R. § 2.341(c)(3). A presiding officer order denying a request for access to SUNSI or SGI may be appealed by the requestor only on the question of whether the request should have been granted in whole or in part. A presiding officer order granting a request for access to SUNSI or SGI may only be appealed on the question of whether the request should

(. . . continued)
will have been made prior to the initial decision. In this case, there is no need for another § 52.103(g) finding after an initial decision finding that the contested acceptance criteria have been met because the initial decision will have confirmed the correctness of the § 52.103(g) finding with respect to the contested acceptance criteria.

have been denied in whole or in part. However, such a question with respect to SGI may only be appealed by the NRC staff, and such a question with respect to SUNSI may be appealed only by the NRC staff or by a person whose interest independent of the proceeding would be harmed by the release of the information.

b. The Commission does not expect appeals seeking to overturn a denial of access to SUNSI or SGI to delay any aspect of the proceeding unless the requestor can show irreparable harm.

c. No other requests for interlocutory review of presiding officer decisions will be entertained. Interlocutory review of decisions other than on requests for access to SUNSI or SGI are unnecessary and unproductive given the expedited nature of the proceeding.

3. *Certified Questions/Referred Rulings*

a. We recognize that there may be unusual cases that merit a presiding officer certifying a question or referring a ruling, notwithstanding the potential for delay. Therefore, the provisions regarding certified questions or referred rulings in 10 C.F.R. §§ 2.323(f) and 2.341(f)(1) apply to this proceeding. However, the proceeding is not stayed by the presiding officer's referral of a ruling or certification of a question. Where practicable, the presiding officer should first rule on the matter in question and then seek Commission input in the form of a referred ruling to minimize delays in the proceeding during the pendency of the Commission's review.

K. Stays of Decisions or Actions

a. 10 C.F.R. §§ 2.342 and 2.1213 are applicable to this proceeding with the following exceptions:

i. The deadline in § 2.342 for filing either a stay application or an answer to a stay application is shortened to 7 days.

ii. The deadline in § 2.1213(c) to file an answer supporting or opposing a stay application is shortened to 7 days.

iii. A request to stay the effectiveness of the Commission's decision on interim operation will not be entertained. The Commission's decision on interim operation becomes final agency action once the NRC staff makes the finding under 10 C.F.R. § 52.103(g) that the acceptance criteria are met and issues an order allowing interim operation.

L. Additional Provisions

1. *The following provisions in 10 C.F.R. Part 2 apply to this hearing as written and in accordance with Commission case law, except as otherwise noted:*

a. 10 C.F.R. § 2.4 (Definitions): with the clarification that this proceeding is considered a "contested proceeding."

b. 10 C.F.R. § 2.8 (Information collection requirements: OMB approval).

c. 10 C.F.R. § 2.111 (Prohibition on sex discrimination).

d. 10 C.F.R. § 2.302 (Filing of documents): with the exception that subsections (b)(1) and (d)(2), which relate to first-class mail delivery, do not apply. When the presiding officer has approved a method other than electronic filing through the E-Filing system, documents filed in this proceeding must be transmitted either by fax, email, or overnight mail to ensure expedited delivery. Use of overnight mail will only be allowed if fax or email is impractical. In addition, for documents that are too large for the E-Filing system but could be filed through the E-Filing system if segmented into smaller files, the filer must segment the document and file the segments separately.

e. 10 C.F.R. § 2.303 (Docket).

f. 10 C.F.R. § 2.304 (Formal requirements for documents; signatures; acceptance for filing).

g. 10 C.F.R. § 2.305 (Service of documents, methods, proof): with the exception that when the presiding officer has approved a method other than electronic service through the E-Filing system, service must be made either by fax, email, or overnight mail in order to ensure expedited delivery. Use of overnight mail will only be allowed if fax or email is impractical.

h. 10 C.F.R. § 2.306 (Computation of time): with the exception that subsections (b)(1) through (b)(4), which allow additional time for mail delivery, do not apply. Because overnight delivery will result in only minimal delay, it is not necessary to extend the time for a response.

i. 10 C.F.R. § 2.312 (Notice of hearing): the presiding officer will issue the notice of hearing promptly after it sets the time and place for the hearing.

j. 10 C.F.R. § 2.313 (Designation of presiding officer, disqualification, unavailability, and substitution): with the exception that subsection (a) does not apply because this order governs the selection of the presiding officer.

k. 10 C.F.R. § 2.314 (Appearance and practice before the Commission in adjudicatory proceedings): with the exception that, to expedite the proceeding, the time to appeal a disciplinary sanction under subsection (c)(3) is modified to 10 days after issuance of the order imposing sanctions.

l. 10 C.F.R. § 2.315 (Participation by a person not a party).

m. 10 C.F.R. § 2.316 (Consolidation of parties).

n. 10 C.F.R. § 2.317 (Separate hearings; consolidation of proceedings): with the exception that under subsection (b), the presiding officer may not consolidate two or more proceedings without the Commission's permission if there is a conflict in the Commission-imposed hearing procedures for those proceedings. In such cases, the presiding officer shall propose for Commission approval a reconciliation of the procedural differences that would allow for consolidation of the proceedings.

o. 10 C.F.R. § 2.318 (Commencement and termination of jurisdiction of presiding officer).

p. 10 C.F.R. § 2.319 (Power of the presiding officer): subsections (a), (c), (d), (e), (g), (h), (i), (j), (k), (l), (m), (o), (p), (q), (r), and (s) apply in their entirety. Subsection (b) applies with the clarification that the presiding officer may not broaden the scope of discovery or disclosures beyond what is set forth in this Order. Subsection (f) does not apply because depositions are not allowed in this proceeding. Subsection (n) applies subject to the modifications made to 10 C.F.R. § 2.322 for this proceeding.

q. 10 C.F.R. § 2.320 (Default).

r. 10 C.F.R. § 2.321 (Atomic Safety and Licensing Boards).

s. 10 C.F.R. § 2.322 (Special assistants to the presiding officer): with the exception that subsections (a)(2) and (a)(4) do not apply. The use of a special master is not necessary with a licensing board or a single legal judge serving as the presiding officer.

t. 10 C.F.R. § 2.324 (Order of procedure).

u. 10 C.F.R. § 2.325 (Burden of proof).

v. 10 C.F.R. § 2.327 (Official recording; transcript).

w. 10 C.F.R. § 2.328 (Hearings to be public).

x. 10 C.F.R. § 2.329 (Prehearing conference).

y. 10 C.F.R. § 2.330 (Stipulations).

z. 10 C.F.R. § 2.331 (Oral argument before the presiding officer).

aa. 10 C.F.R. § 2.332 (General case scheduling and management): with the exceptions that the presiding officer may not amend the schedule and procedures for this proceeding except as otherwise provided in this order, and that subsection (d) does not apply. As stated above, the presiding officer should issue an initial scheduling order within 3 days of the prehearing scheduling conference.

bb. 10 C.F.R. § 2.333 (Authority of the presiding officer to regulate procedure in a hearing).

cc. 10 C.F.R. § 2.334 (Implementing hearing schedule for proceeding): with the exception that, in the interest of avoiding unnecessary paperwork, subsection (c), which requires written notification to the Commission of certain delays in the hearing schedule, does not apply. The hearing procedures imposed in this order provide the presiding officer with some flexibility for certain intermediate hearing deadlines, with the exception that a showing of unavoidable and extreme circumstances is needed to delay a “strict deadline.”

dd. 10 C.F.R. § 2.335 (Consideration of Commission rules in adjudications).

ee. 10 C.F.R. § 2.337 (Evidence at a hearing).

ff. 10 C.F.R. § 2.338 (Settlement of issues; alternative dispute resolution): with the clarification that alternative dispute resolution processes or settlement negotiations are to be conducted in parallel to the hearing process and may not serve to delay the proceeding. Additionally,

consistent with subsection (b), alternative dispute resolution may be undertaken only upon a joint motion of all the parties.

gg. 10 C.F.R. § 2.339 (Expedited decisionmaking procedure), with the exception that subsection (d) does not apply to an ITAAC hearing.

hh. 10 C.F.R. § 2.343 (Oral argument).

ii. 10 C.F.R. § 2.344 (Final decision).

jj. 10 C.F.R. § 2.346 (Authority of the Secretary).

kk. 10 C.F.R. § 2.347 (Ex parte communications).

ll. 10 C.F.R. § 2.348 (Separation of functions).

mm. 10 C.F.R. § 2.390 (Public inspections, exemptions, requests for withholding).

nn. 10 C.F.R. § 2.1201 (Definitions).

IT IS SO ORDERED.

For the Commission

_____
[Name]
Secretary of the Commission

Dated at Rockville, Maryland,
this __ day of [month], 20__.