



Demystifying the Adjudicatory Process

Brooke P. Clark, Director

Office of Commission Appellate Adjudication

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Agenda

- Hearing Basics
- Appellate Process
- Separation of Functions/Ex Parte Restrictions
- Issue of Interest – Yucca Mountain Status

Hearing Basics

- **Why** - The Atomic Energy Act of 1954 requires that a hearing be held in certain circumstances, and provides an opportunity for a hearing in others.
- **How** - NRC hearings are administrative trial-type proceedings, governed by the Administrative Procedure Act and 10 C.F.R. Part 2 rules.
- **Who** - NRC hearings generally are presided over by three-member panels, referred to as an “Atomic Safety and Licensing Board.”
- **What** – The Board will make a decision based on the adjudicatory record. An aggrieved party may then file an appeal with the Commission (review is discretionary).

Appellate Process

- Each adjudication before the Board is monitored on an ongoing basis.
- OCAA attorneys review Board decisions, appeals, and motions filed with the Commission.
- OCAA drafts a proposed decision (sometimes with options), and an associated Commission paper.
- OCAA consults technical experts from the NRC (if necessary), as well as the NRC Solicitor (in most cases).
- Commission adjudicatory decisions are affirmed via public Commission meetings.

Separation of Functions/Ex Parte Restrictions

- Separation of Functions Rule - Separates and restricts communications between (1) NRC employees participating in agency adjudications on behalf of the NRC Staff (“adversarial” staff) and (2) agency decisionmakers and those assisting them (“decisionmaker” staff).
- Ex Parte Rule – Separates parties to litigation outside the NRC and decisionmaker staff.
- Restrictions protect the fairness of the adjudicatory process. Parties to a dispute must know what information the decisionmaker has available to use (whether from outside parties or adversarial staff with a stake in the outcome).

Status of Yucca Mountain Adjudication

- June 2008 – construction authorization application submitted; October 2008 – notice of hearing
- Litigation commenced and continued through 2011
- March 2010 – DOE filed motion to withdraw application; Board denied motion June 20, 2010 (LBP-10-11)
- September 2011 – The Commission announced it was evenly divided on whether to take review of, and affirm or revise, the Board's decision (CLI-11-7)
- September 2011 – Board suspended proceeding (LBP-11-24)
- August 2013 – D.C. Circuit ordered the NRC to resume the Yucca Mountain licensing process using remaining NWF monies.
- Path forward (if adjudication is resumed): contested hearing and Commission review



QUESTIONS?