

**NRC STAFF SUMMARY**  
**Contested and Uncontested Hearing Processes for a Combined License (COL)**  
**Application**

March 3, 2020

In accordance with the Atomic Energy Act of 1954, as amended (AEA), and NRC regulations, the NRC holds an uncontested hearing and provides an opportunity for a contested hearing before issuance of a COL. The purpose of the uncontested (also called “mandatory”) hearing is to support Commission oversight of the staff’s review of the application. The purpose of the contested hearing process is to allow interested persons an opportunity to challenge one or more aspects of the COL application. These two hearing processes are summarized below.

**Contested Hearing Process**

1. The contested hearing process begins with a notice of hearing that is published in the *Federal Register*. This notice announces the opportunity for persons to file petitions to intervene in the hearing. (10 CFR 2.104(a)).
  - a. The notice of hearing will be published shortly after the application is “docketed” (that is, accepted for staff review) and will ordinarily require that intervention petitions be submitted within 60 days.
  - b. For an intervention petition to be granted, the petitioner must demonstrate standing and propose an admissible contention (10 CFR 2.309).
  - c. The applicant and NRC staff have 25 days to file an answer to an intervention petition. The petitioner has 7 days to reply to these answers. (10 CFR 2.309(i)).
  - d. Usually, a licensing board decides whether to grant the intervention petition.
  - e. If the petition is granted, a contested (i.e., adversarial) hearing will be held unless the contested issue is resolved before the hearing occurs.
  - f. The general hearing procedures in Subpart C of 10 CFR Part 2 govern the contested hearing process. If an intervention petition is granted, the licensing board will select additional procedures from another Subpart of Part 2 to govern the hearing; in most cases Subpart L procedures will apply.
2. To show standing, the petitioner must demonstrate, among other things, that it has an “interest” in the proceeding that would be affected by a decision that could be taken in the proceeding.
3. Proposed contentions must satisfy the criteria in 10 CFR 2.309(f)(1)(i)-(vi):
  - a. specify the legal or factual issues in controversy
  - b. briefly explain the basis for the contention
  - c. demonstrate that the contention is within the scope of the proceeding and material to the required NRC findings for issuance of the license
  - d. concisely state the facts or expert opinions supporting the contention
  - e. provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.
4. Non-party participation by interested states, local governments, and federally recognized Indian Tribes is governed by 10 CFR 2.315(c).
5. There is a limited right for the participants to file an appeal with the Commission challenging a licensing board’s decision to grant or deny the intervention petition (10 CFR 2.311).

6. If the intervention petition is granted:
  - a. The licensing board will select the additional procedures for the hearing (10 CFR 2.310). For COL applications, the Subpart L procedures apply by default, but other procedures may apply if certain criteria are met.
  - b. Model milestones for hearings under various subparts are in 10 CFR Part 2, Appendix B.
  - c. The NRC staff must decide whether to participate as a party within 15 days of a decision granting an intervention petition (10 CFR 2.1202(b)(2)).
  - d. The intervenor, applicant, and NRC staff must disclose documents relevant to admitted contentions within 30 days of the decision granting the petition and update these disclosures every month (10 CFR 2.336). On the same schedule, the NRC staff must also produce a hearing file that, among other things, includes the application, any associated NRC reports, the NRC EIS, and correspondence between the applicant and the staff (10 CFR 2.1203).
  - e. The licensing board typically issues a scheduling order governing document disclosures and other matters relevant to the proceeding (10 CFR 2.332).
7. Persons may file intervention petitions and new or amended contentions after the initial 60-day deadline, but they must show good cause for filing after the deadline (10 CFR 2.309(c)).
8. Admitted contentions can be resolved prior to hearing, for example, by settlement, by motions to dismiss the contention as moot, or by motions for summary disposition (10 CFR 2.323, 2.338, 2.1205).
9. Hearings on environmental issues challenging the environmental report and addressed in the EIS may not commence until the final EIS is published. Hearings on safety issues may commence before publication of the safety evaluation if this would expedite the proceeding. The presiding officer must consider the staff's review schedule to ensure that the hearing schedule does not adversely impact the staff's ability to complete its reviews in a timely manner. (10 CFR 2.332(d)).
10. A Subpart L hearing involves the following steps (10 CFR 2.1207 unless otherwise indicated):
  - a. Parties file initial statements of position and written testimony.
  - b. Parties file written responses and rebuttal testimony.
  - c. Parties file proposed questions for the presiding officer to consider asking the witnesses. Filing is *in camera*, but questions will be made public if asked during the hearing or otherwise after the presiding officer's initial decision after hearing.
  - d. By default, cross-examination by an opposing party is not allowed, but a party may move to conduct cross-examination. The motion will be granted only if the presiding officer determines that cross-examination "is necessary to ensure the development of an adequate record for decision." (10 CFR 2.1204).
  - e. An oral hearing will be held unless the presiding officer grants a unanimous joint motion of the parties asking that the hearing consist of written submissions (10 CFR 2.1206).
  - f. Only the presiding officer will ask questions at the oral hearing, unless a motion for cross-examination is granted.
  - g. After the oral hearing, parties are required to file proposed findings of fact and conclusions of law (10 CFR 2.1209).

- h. The presiding officer will issue a written decision on the material legal and factual issues based on evidence in the record (10 CFR 2.1210).
  - i. The parties may file a petition for review of the decision with the Commission (10 CFR 2.341).
11. NRC hearings might involve sensitive information.
- a. Typically, the notice of hearing for a COL application includes an order with procedures governing the public's request for access to sensitive unclassified non-safeguards information (SUNSI) or safeguards information (SGI) for contention preparation.
    - i. Access to SUNSI requires a showing that the petitioner is likely to establish standing and a showing that the petitioner needs access to the SUNSI to proffer a contention.
    - ii. Access to SGI requires a showing that the petitioner is likely to establish standing, a showing that the petitioner has a need to know the SGI (10 CFR 73.2), and an NRC determination that the person seeking access is trustworthy and reliable based on a background check.
  - b. Issues regarding access to SUNSI or SGI might also arise after a contention is admitted during the document disclosure process.
  - c. If a petitioner qualifies for access to SUNSI or SGI, a protective order is typically issued imposing protection requirements for the information.

#### Uncontested Hearing Process

1. The Commission presides over the uncontested hearing process, which is discussed in Chapter IV of the Internal Commission Procedures (available at <https://www.nrc.gov/about-nrc/policy-making/internal.html>).
2. The applicant and the NRC staff are the only parties in the uncontested hearing, but interested states, local governments, federal agencies, and federally recognized Indian Tribes may participate to the extent permitted by the Commission (for example, by submitting a written statement).
3. The uncontested hearing process begins shortly after the staff has completed its review.
4. The staff transmits a SECY paper supporting the mandatory hearing within a week after issuance of the final SER or final EIS (whichever is later). This paper summarizes the staff's review and the basis for making the findings needed to issue the COL (provided the Staff determines that all requisite findings can be made). The paper also discusses any novel issues that arose during the review.
5. Shortly thereafter, the NRC publishes notice of the uncontested hearing in the *Federal Register*.
6. The Commission typically issues written questions to the applicant and the staff a few weeks prior to the hearing, with responses typically due before the date of the oral hearing.
7. The oral hearing typically takes a single day. The staff and applicant make short presentations, and the Commissioners ask questions. The hearing is public and anyone may attend. The hearing is usually webcast, as well.
8. The Commission may issue post-hearing questions, with answers typically due about 2 weeks after the hearing.
9. The Secretary then closes the hearing record. The Commission's decision follows.