

(TH31) Regulatory Changes That Would Improve the NRC Adjudicatory Process

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Atomic Safety and Licensing Board Panel (ASLBP)

Regulatory Changes That Would Improve the NRC Adjudicatory Process

Speakers/Panelists:

- Ronald Spritzer, Administrative Judge, ASLBP, NRC
- Alan Rosenthal, Administrative Judge, ASLBP, NRC
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- Ellen Ginsburg, Vice President, General Counsel and Secretary, Nuclear Energy Institute
- Philip Mahowald, General Counsel, Prairie Island Indian Community

BRIEF SUMMARY OF THE NRC ADJUDICATORY PROCESS

- In any proceeding for the "granting, suspending, revoking, or amending of any license or construction permit" the "Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding." Atomic Energy Act of 1954, § 189a.
- Under AEA § 191, "the Commission is authorized to establish one or more atomic safety and licensing boards, each comprised of three members . . . to conduct such hearings as the Commission may direct and make such intermediate or final decisions as the Commission may authorize." The judges appointed to individual licensing boards are drawn from the Atomic Safety and Licensing Board Panel (ASLBP).

- NRC regulations governing the hearing process. 10 CFR Part 2.
- Substantially revised on January 14, 2004. 69 Fed. Reg. 2182.
- Main thrust of the revisions was to expedite the hearing process by requiring that most cases be conducted under the procedures in Subpart L of Part 2.
- Subpart L eliminates discovery, limits cross-examination, and provides for a hearing in which all or most of the questioning is conducted by judges.

- In 2012, the Commission made additional changes to Part 2, while referring to a possible future comprehensive revision to the procedural regulations. 77 Fed. Reg. 46562, 46564, 46570 (August 3, 2012).
- Our panel today will offer suggestions for potential changes to the regulations that they believe should be considered in any such future revision.

CONTESTED SUBPART L EVIDENTIARY HEARINGS FROM 1/14/04 TO 3/1/13 (Does not include ASLBP mandatory hearings (ESP or U-Enrichment) or Subpart G hearings)

Year of Evidentiary Hearing (EH)	Case	Total Number of Contentions Adjudicated in EH	Total Number of Hearing Days
2006	Vermont Yankee Update	1	2
2007	Oyster Creek Renewal	1	2
2007	Kern - Jefferson Proving Grounds	1	1
2008	Vermont Yankee Renewal	3	4
2008	Pilgrim Renewal	1	1
2009	Vogtle ESP	3	4
2011-12	South Texas COL	2	3
2012	Shaw Avenue MOX COL	3	2
2012	Honeywell Exemption	1	1
2012	Calvert Cliffs COL	1	2
2012	Indian Point Renewal	9	12
2012	Phase 1 Levy County COL	1	2
12 Contested Subpart L Evidentiary Hearings		27 Contentions made it to EH	36 Days of EH

Average number of contentions per evidentiary hearing: 2.25.

Average evidentiary hearing time per contention: 1.33 days

Average evidentiary hearing: 3 days

TOPICS FOR DISCUSSION

Timing requirements for hearing requests and contentions

Admission of Contentions

Expediting the process

Cross Examination

Role of the NRC Staff in adjudications

Typical Timetable for COL Adjudicatory Proceeding

Activity/Task	Days	Total	2010	2011	2012	2013
Application submitted	0	0				
FR Notice of Docketing	60	60				
FR Notice of Hearing ¹	90	150				
Petitions Filed	60	210				
Decision of Admissibility	77	287				
Staff Issues DEIS	120	407				
Staff Issues FEIS ²	300	707				
Staff Issues FSER	150	857				
Filing of EH evidence and motions	100	957				
Board rules on motions, responses Qs for hearing	30	987				
Evidentiary Hearing	1	988				
Board Decision	120	1108				

¹ COLs are subject to the mandatory hearings per AEA §89a and 10 C.F.R. §2.104. This chart deals only with the contested issues, not the mandatory hearings.

² Total Staff & Applicant processing time = 847 days. From date of application to FEIS and FSER.

³ Total time for filing of new contentions (and motions for summary disposition on initial contentions) = 570 (time from initial decision to FSER+30)

⁴ See 10 C.F.R. § 2.120(f)(1). The evidentiary hearing generally cannot be held until the Staff issues the FSER and FEIS. 10 C.F.R. § 2.131(d).