




RIC 2014

**The Administrative Hearing Process:
What Can the NRC Learn from Other Agencies?**

Judge Ronald Spritzer
And
Judge William Froehlich
ASLBP
March 12, 2014



ATOMIC ENERGY ACT

- 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). Typically a board will include one lawyer and two technical judges (scientists or engineers).



NRC HEARING REGULATIONS


- 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.



TOPICS FOR DISCUSSION


Timing requirements for hearing requests and contentions

In general, hearing requests and contentions must be filed within 60 days of the final license application with the NRC. Failure to file a timely petition may result in the loss of the opportunity for a hearing even though the Final Staff documents (the Final Safety Evaluation Report and the Final Environmental Impact Statement) are normally not issued until years later. The primary exception to the 60 day requirement applies when new information becomes available that is materially different from that available at the time the 60 day clock started running.



STANDING

Petitioners are required to demonstrate standing in order for their request for a hearing or petition to intervene to be granted.. In general, the NRC determines standing using legal rules developed by federal courts.



ADMISSION OF CONTENTIONS

An admissible contention must: (i) provide a specific statement of the legal or factual issue sought to be raised; (ii) provide a brief explanation of the Basis for the contention; (iii) demonstrate that the issue raised is within the scope of the proceeding; (iv) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (v) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at the hearing; and (vi) provide sufficient information to show that a genuine dispute exists in regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or, in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief. 10 C.F.R. § 2.309(f)(1).

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DISCOVERY

No Discovery in Subpart L proceedings. The parties are required to disclose certain types of information, mainly documents, but there is no provision for interrogatories, depositions, requests for admissions, or other discovery tools routinely used in federal and state courts.

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CROSS EXAMINATION

Cross Examination is limited. In general, judges ask the questions at the hearings. The parties must request permission to conduct cross-examination, which will be granted only if the Board determines that cross-examination is necessary to develop an adequate record.

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ROLE OF THE NRC STAFF IN ADJUDICATIONS

The Staff usually participates as a party. The other parties are the petitioners/intervenors and license applicant. There is no separate representation of the public. This may contrast with the role of the People's Counsel in Maryland Public Utility Commission proceedings.



APPEALS FROM LICENSING BOARD DECISIONS

In addition to appeals at the end of the case, interlocutory appeals may be filed in several circumstances. Probably of most importance is the rule allowing an appeal of an order granting a request for hearing and/or petition to intervene, if the appellant argues that the request and/or petition should have been wholly denied. 10 C.F.R. § 2.311(d)(1). This would apply when the appellant argues that the petitioner lacks standing or that all its proposed contentions should have been held inadmissible.
