

Public Participation in NRC Regulatory Decision Making

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Key Messages

- Balancing all stakeholder interests is critical
- Adjudication is only one of the many opportunities for stakeholder input on safe and environmentally sound operation
- Rulemaking provides for greater participation than issuance of an order

Balancing All Interests

- Balance must be struck between public's interest in having sufficient opportunity to air relevant safety and environmental issues and the industry's interest in efficient and focused regulatory reviews and expeditious agency action
- Adjudications require significant consumption of NRC, applicant, and intervenor resources
- Commission's adjudicatory framework – including contention admissibility – is based on substantial agency experience balancing those interests

Court Review of NRC Adjudicatory Procedures

- First Circuit Upholds Adoption of Revised Hearing Procedures (2004)
 - Significant changes included limiting cross examination, reducing discovery procedures
- First Circuit Opines on Contention Admissibility Requirements (2013)
 - Court rejects “backdoor challenge” to the decision made by the NRC in 1989, at the prompting of Congress, to toughen the standards for getting a hearing on contentions (imposing requirement that to be admissible a contention must provide sufficient information . . . to show that a genuine dispute exists).
 - Congress was concerned and called for change because “[s]erious hearing delays -- of months or years -- occurred, as licensing boards admitted and then sifted through poorly defined or supported contentions.”
 - “[M]aterials cited as the basis for a contention are subject to scrutiny by the board to determine whether they actually support the facts alleged,” *Calvert Cliffs 3 Nuclear Project, LLC*, 72 N.R.C. 720, 750 (2010); “otherwise, the aims of the rules and of Congress would be thwarted.”

Contention Admissibility

- Requirement to identify **specific issues** and provide **minimal basis** relieves all parties of the burden of having to develop evidence and prepare a case to address vague or undefined claims
- Data demonstrates that threshold is being met and contentions raising **genuine disputes** on **material issues** are being admitted

Hearing Requests Granted on COL Applications

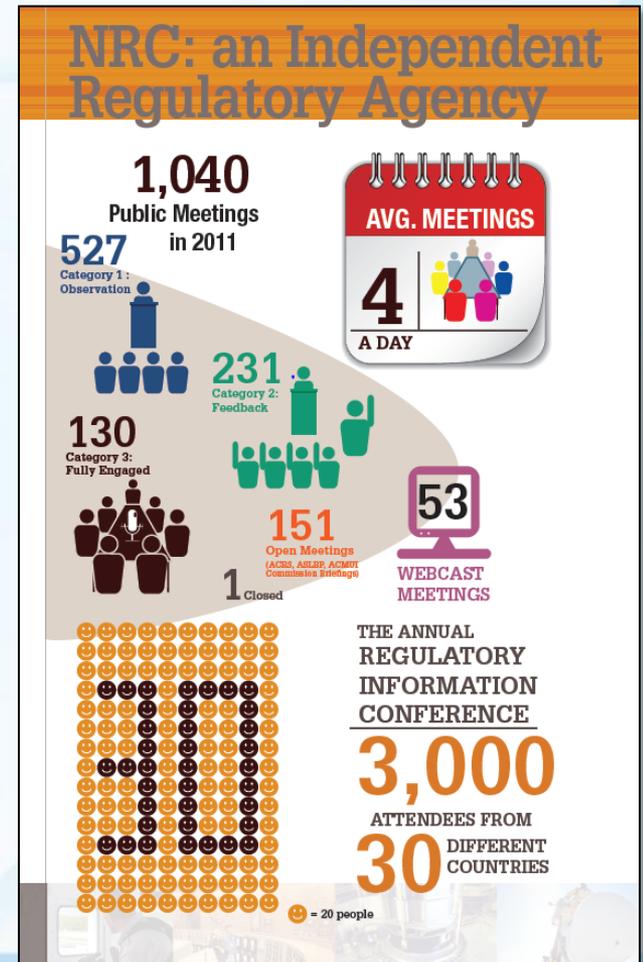
Overview of Hearings on COL Applications		
Hearing Opportunity	Hearing Request	Hearing Granted
Bell Bend	Bell Bend	Bellefonte
Bellefonte	Bellefonte	Calvert Cliffs
Calvert Cliffs	Calvert Cliffs	Comanche Peak
Comanche Peak	Comanche Peak	Fermi
Fermi	Fermi	Levy
Grand Gulf	Harris	North Anna
Harris	Levy	South Texas
Levy	North Anna	Turkey Point
North Anna	South Texas	Vogtle
South Texas	Summer	
Summer	Turkey Point	
Turkey Point	Vogtle	
Vogtle	W.S. Lee	
W.S. Lee		

What the Data on Contentions Does Not Tell Us

- Licensing process is iterative or dynamic
- Staff often adjusts or refocuses its review based on submitted contentions
- Applicants may enhance their applications in response to submitted contentions
- Applicants and intervenors often settle

Multiple Avenues to Air Issues

- Formal
 - National Environmental Policy Act
 - 10 CFR 2.206 petitions
 - Petitions for rulemaking
 - Other agency rulemakings
 - Allegations program
- Informal
 - Communication with Commissioners and Staff
 - Conferences/Meetings/Presentations



NRC 2012-2013 Information Digest

Data Confirms Use of 2.206 Petitions

- Since January 1975, NRC has considered 387 2.206 petitions
 - 245 denied
 - 142 granted in whole or in part or petition otherwise prompted Staff action or petition was already being addressed by the staff
- Data demonstrates grant of substantive relief for approximately 35% of all 2.206 petitions

Rulemaking

- Rulemaking is appropriate for generic issues as it provides for extensive participation by stakeholders
- Rulemaking can be done expeditiously without sacrificing extensive stakeholder interaction
 - *E.g.*, aircraft impact assessment, FFD alternative work hours, waste confidence
- Commission direction on regulatory basis development, early guidance, etc. is a positive step forward
- Management oversight is critical

Rulemaking/Orders

- Industry concern regarding agency's recent use of orders in place of rulemakings
 - Both orders and rulemakings are permissible under the AEA/APA
 - Rulemaking offers greater opportunity for public participation
 - NRC may offer guidance on implementation as part of the rulemaking package
 - Licensing boards are not the appropriate bodies to rule on generic policy issues

Potential Improvements in Transparency

- Engage in more stakeholder interaction prior to initiating rulemaking
 - Adhere to Commission direction regarding regulatory basis development for rulemakings
- Develop guidance in parallel with rule
- More Commission supervision on higher priority rules
- Fuller consideration of need for and impact of “omnibus” rules

Conclusions

- Industry fully supports meaningful and efficient stakeholder interaction
- Adjudication is not the only means of public participation
- Commission should avoid using the adjudicatory process as a substitute for issuing direction on generic policy issues
- Adjudicatory procedures reasonably balance opportunity with efficiency