



Public Participation in NRC Regulatory Decision Making

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Historical Perspectives

- Balancing of interests
 - Meaningful public participation vs. resolving licensing matters in a timely and efficient manner
- Issue predates TMI, and postdates TMI
- Commission has ample authority to strike the right balance

Atomic Energy Act

- “the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding” sec. 189.a
- Procedures patterned after FPC, FCC, ICC
- “The words themselves do not provide a test for deciding difficult cases.” (Marks & Trowbridge, 1955)

Original Concepts for Public Participation

- Notwithstanding statutory direction, early Commission process aimed more at education than adjudication
- Uncontested hearings, limited appearances, on-site hearings, real-time answers to the public's questions

Intervention Standards

- Section 189.a “was not the last word on the subject of intervention”. (*Cities of Statesville v. AEC*, D.C. Cir. 1969)
- Petition “shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by Commission action, and the contentions of the petitioner.” 10 CFR 2.714 (1962)

Licensing Delays Long Recognized

- “The giant delays that now plague such proceedings . . . “ *Ecology Action v. AEC*, (2d Cir. 1974)(Friendly, J.)
- 1972 Rulemaking
 - “widely shared concern about the ability of the Commission’s licensing process, as currently structured, to cope with the demands being placed on it”

- “there are increasing delays in completing the decisional process”
- “positive necessity for expediting the decision-making process and avoiding undue delays”
- “new responsibilities would be place on those permitted to intervene in connection with making and supporting allegations”
- “it would not be sufficient merely to make an unsupported allegation” Statement of Considerations (1972)

- Revised 2.714

- Petition to intervene “shall be accompanied by a supporting affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which he wishes to intervene and setting forth with particularity both the facts pertaining to his interest and the basis for his contention with regard to each aspect on which he desires to intervene.”

BPI v. AEC, D.C. Cir. 1974

- D.C. Circuit rejects claim that requiring intervenor to identify specific aspects and bases for contention with particularity violates sec. 189.
- Commission permitted to require “particularization for the basis for the contention”

1978 Revisions

- Contentions no longer filed with intervention petition
- Requirement removed for affidavit to accompany petition
 - “seriousness and accuracy of petitioner’s contentions are adequately ensured by the requirement that all testimony at hearing must be given under oath.”
 - but no requirement that intervenor present testimony at hearing.

NRC Hearings in Agency Context

- AEC/NRC hearing processes patterned after those of older agencies – FCC, ICC, CAB, etc.
- Adjudicatory with all the trappings
- Over time, those agencies have -
 - disappeared
 - switched to less adjudicatory, “legislative” style hearings
- NRC hasn’t kept pace

NRC Approach to Public Participation

- Numerous opportunities available beyond hearings
 - ADAMS – documents available in real time
 - Open, noticed meetings – live, dial-in, web-cast
 - Comment opportunities
 - Accessibility of Staff
 - 2.206 petitions
 - Rulemaking petitions
 - Social media

Areas for Improvement?

- Certainly
- It's not a static world
- Self-critical assessments
 - like NRC expects of licensees
- But don't necessarily assume system is broke

- More Commission oversight of ASLB's
 - Judicious approach to interlocutory appeals.
- More timely actions
 - Third parties rulemaking petitions
 - Better and better-communicated prioritization