

## The Nuclear Regulatory Commission Hearing Process

Lisa Clark  
Senior Attorney  
Office of General Counsel  
Nuclear Regulatory Commission

- I. What is an NRC hearing?
  - A. The hearing process is the means provided for the public to participate in the NRC decision-making process relating to the issuance and amendment of licenses.
  - B. Hearings are conducted by Administrative Law Judges who work for the NRC. They are independent of the Commissioners and the Staff and are prohibited from communicating with the Commission or the Staff about matters related to the subject of an ongoing hearing.
  - C. Hearings can take the form of a trial type hearing with witnesses and cross examination. However, typically hearings are more informal, with questioning conducted only by the judges. Upon request by the parties the hearing may be conducted by means of paper filings only.
- II. What initiates the opportunity for a hearing before the NRC?
  - A. Filing of a license application or a request for a license amendment.
  - B. NRC regulations generally require a license for the operation of uranium mills and the disposition of tailings or wastes produced by the extraction or concentration of source material from ores processed primarily for their source material content. The regulations are found in Title 10 of the Code of Federal Regulations (C.F.R.) Part 40.
  - C. When a license application is received, the Staff performs an acceptance review to determine whether the application warrants a complete technical review. If accepted, the Staff docket the application. Notice of receipt of the application will be provided to the public through publication in the Federal Register and, if considered a major application, on the NRC web site.
  - D. License amendment requests are not required to be noticed in the Federal Register or on the NRC web site but may be at the discretion of the Staff depending on the nature of the amendment.
- III. How is a hearing initiated?
  - A. Hearings are not mandatory for Part 40 licenses except for licensing of uranium enrichment facilities.
  - B. Except for mandatory hearings (under Part 40 only required for licensing a uranium enrichment facility) hearings are only held if a member of the public

successfully satisfies the requirements for intervention. These are set forth in 10 C.F.R. 2.309 and require the individual or organization:

1. Demonstrate that it has a direct and tangible interest in the NRC's licensing determination. This is known as "standing."
2. States and Indian Tribes need not show standing if the proposed facility or licensee is located within their boundaries.
3. Propose at least one admissible contention to be considered in the hearing. Contentions are statements of the specific issues that the individual or organization wishes to dispute in the hearing. To be admissible, the contention must relate to the licensing action under review, be specific and be supported by facts and/or expert opinion.

IV. What is the subject of the hearing?

- A. The scope of issues which may be considered in a hearing is limited to matters which relate to the specific license or license amendment which is under consideration.
- B. A contested hearing; i.e, one initiated by an intervenor, is limited to consideration of the admitted contentions.

V. What is the process for a contested proceeding of the type that would be conducted for Part 40 licenses?

- A. All hearing for the licensing under Part 40 (with the exception of the licensing of a uranium enrichment facility) will be conducted under the default hearing process, known as a Subpart L proceeding. The specific regulations governing Subpart L proceedings are found in Subpart L of Part 2 of 10 C.F.R. These are considered in conjunction with the general rules that apply to all proceedings found in Subpart C of Part 2.
- B. The first step is the filing of requests for hearings. The hearing request is called a "Petition" and the requester a "Petitioner." The timing of the hearing request is tied to the notification of the pending license application or license amendment.
- C. The applicant or licensee will have the opportunity to respond to the hearing request. The Staff will determine whether or not to participate in the proceeding. If the Staff decides to participate, it will also respond to the hearing request.
- D. The Commission will assign an Administrative Judge to preside over the hearing, called the Presiding Officer. The Commission may assign a panel of three judges to preside over the hearing for more complex cases. The panel is referred to collectively as the Licensing Board.
- E. The Presiding Officer will rule on standing and the admissibility of contentions. If any Petitioner has been found to have established standing and proposed at least one admissible contention, the hearing will go forward. If not, the hearing request(s) is denied and the proceeding terminated.

- F. The next step in the process is the process is discovery. This is the means by which parties obtain information regarding the subject of the hearing. For Subpart L hearings, the Staff prepares and maintains a hearing file which must include the application, any amendment to the application and, when available any NRC environmental impact statement or assessment, any NRC report related to the proposed action (such as the SER), and correspondence between the applicant or licensee and the NRC.
  - G. Following issuance of the Staff's review documents, each party prepares written statements of position and written testimony support by expert affidavits. Each party is permitted the opportunity to file written testimony to rebut the statements of other parties.
  - H. Once all testimony has been provided, the Presiding Officer is provided the opportunity to question the parties and their experts. In an oral proceeding, each party submits proposed questions for the Presiding Officer, which he or she may ask at his or her discretion. The Presiding Officer may ask additional questions; however, the parties may not directly conduct questioning during the hearing.
  - I. If the Presiding Officer has granted a request by the parties for a written hearing, all questions will be asked and answered in writing. As with the oral hearing, all questions from parties must be provided to the Presiding Officer, who will then ask them at his or her discretion.
  - J. Following the hearing, all parties will prepare proposed findings of fact and conclusions of law for the Presiding Officer. Essentially, this is the opportunity for each party to write the decision they believe the Presiding Officer should adopt.
- VI. How does this process apply to safety versus environmental issues?
- A. Environmental issues arise under the National Environmental Policy Act (NEPA).
    - 1. The obligation to comply with NEPA lies with the reviewing agency. Therefore, the burden of showing compliance with NEPA during the hearing lies with the NRC.
    - 2. Contentions raising environmental issues must be filed initially on the environmental report (ER) filed by the applicant. However, new contentions may be filed based on the Staff's environmental assessment or draft environmental impact statement to the extent they could not have been known based in the ER.
  - B. Safety/Technical issues relate to the adequacy of the application under review.
    - 1. The obligation to address all safety/technical issues lies with the applicant. Therefore, the burden of showing compliance with the regulatory requirements during the hearing lies with the applicant.
    - 2. Contentions raising safety/technical issues must be premised upon the license application. New contentions may be filed based on Staff review documents only if the review documents contain new information that

could not have been gleaned from the application.

VII. What is the outcome of this process?

- A. The Presiding Officer will issue a decision resolving the admitted issues in the proceeding. The decision becomes final after 40 days unless:
  - 1. A party requests Commission review of the decision, or
  - 2. The Commission decides on its own to review the decision.
- B. With certain exceptions (i.e, licenses relating to land disposal of radioactive waste and upon special circumstances recognized by the Presiding Officer) the decision of the Presiding Officer is immediately effective even if an appeal has been requested.
- C. The Commission always has the discretion to decide whether to review a decision by a Presiding Officer. The Commission may affirm or deny all or part of the determinations made by the Presiding Officer. In addition, the Commission has the option of remanding the case back to the Presiding Officer for further proceedings.

VII. What is the timing of the hearing process?

- A. The timing established by the regulations for all of the filings which may be made in a Subpart L proceeding are set forth in the attached table, along with applicable regulation.
- B. Although every hearing will be different and it is not possible to predict with certainty how long any one will take, some very general observations about timing can be drawn from the deadlines in the regulations.
  - 1. If an action is noticed in the Federal Register, a decision on whether the hearing request should be granted may be issued within approximately 140 days after publication (accounting for 60 days for filing of hearing request, 25 days for answers and 7 days for replies, and 45 days for the Board ruling).
  - 2. If a hearing is granted, the hearing will generally be held after the issuance of the Staff review documents. The beginning point of the hearing is the submission of statements of position and testimony by the parties at a date set by the Presiding Officer.
  - 3. The hearing will take, at a minimum, 110 days after the date set by the Presiding Officer for the initial statements of position and testimony.