

Nuclear Regulatory Commission

§ 2.1405

(3) Production or utilization facility licensing actions that involve significant hazards considerations as defined in 10 CFR 50.92.

(b)(1) The NRC staff is not required to be a party to proceedings under this subpart, except where:

(i) The proceeding involves an application denied by the NRC staff or an enforcement action proposed by the staff; or

(ii) The presiding officer determines that the resolution of any issue in the proceeding would be aided materially by the NRC staff's participation in the proceeding as a party and orders the staff to participate as a party for the identified issue. In the event that the presiding officer determines that the NRC staff's participation is necessary, the presiding officer shall issue an order identifying the issue(s) on which the staff is to participate as well as setting forth the basis for the determination that staff participation will materially aid in resolution of the issue(s).

(2) Within fifteen (15) days of the issuance of the order granting requests for hearing/petitions to intervene and admitting contentions, the NRC staff shall notify the presiding officer and the parties whether it desires to participate as a party, and identify the contentions on which it wishes to participate as a party. If the NRC staff desires to be a party thereafter, the NRC staff shall notify the presiding officer and the parties, identify the contentions on which it wishes to participate as a party, and make the disclosures required by § 2.336(b)(3) through (5) unless accompanied by an affidavit explaining why the disclosures cannot be provided to the parties with the notice.

(3) Once the NRC staff chooses to participate as a party, it shall have all the rights and responsibilities of a party with respect to the admitted contention/matter in controversy on which the staff chooses to participate.

§ 2.1404 Prehearing conference.

(a) No later than forty (40) days after the order granting requests for hearing/petitions to intervene, the presiding officer shall conduct a prehearing conference. At the discretion of the presiding officer, the prehearing con-

ference may be held in person or by telephone or through the use of video conference technology.

(b) At the prehearing conference, each party shall provide the presiding officer and the parties participating in the conference with a statement identifying each witness the party plans to present at the hearing and a written summary of the oral and written testimony of each proposed witness. If the prehearing conference is not held in person, each party shall forward the summaries of the party's witnesses' testimony to the presiding officer and the other parties by such means that will ensure the receipt of the summaries by the commencement of the prehearing conference.

(c) At the prehearing conference, the parties shall describe the results of their efforts to settle their disputes or narrow the contentions that remain for hearing, provide an agreed statement of facts, if any, identify witnesses that they propose to present at hearing, provide questions or question areas that they would propose to have the presiding officer cover with the witnesses at the hearing, and discuss other pertinent matters. At the conclusion of the conference, the presiding officer will issue an order specifying the issues to be addressed at the hearing and setting forth any agreements reached by the parties. The order must include the scheduled date for any hearing that remains to be held, and address any other matters as appropriate.

§ 2.1405 Hearing.

(a) No later than twenty (20) days after the conclusion of the prehearing conference, the presiding officer shall hold a hearing on any contention that remains in dispute. At the beginning of the hearing, the presiding officer shall enter into the record all agreements reached by the parties before the hearing.

(b) A hearing will be recorded stenographically or by other means, under the supervision of the presiding officer. A transcript will be prepared from the recording that will be the sole official transcript of the hearing. The transcript will be prepared by an official reporter who may be designated by the

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Commission or may be a regular employee of the Commission. Except as limited by section 181 of the Act or order of the Commission, the transcript will be available for inspection in the agency's public records system. Copies of transcripts are available to the parties and to the public from the official reporter on payment of the charges fixed therefor. If a hearing is recorded on videotape or other video medium, copies of the recording of each daily session of the hearing may be made available to the parties and to the public from the presiding officer upon payment of a charge fixed by the Chief Administrative Judge. Parties may purchase copies of the transcript from the reporter.

(c) Hearings will be open to the public, unless portions of the hearings involving proprietary or other protectable information are closed in accordance with the Commission's regulations.

(d) At the hearing, the presiding officer will not receive oral evidence that is irrelevant, immaterial, unreliable or unduly repetitious. Testimony will be under oath or affirmation.

(e) The presiding officer may question witnesses who testify at the hearing, but the parties may not do so.

(f) Each party may present oral argument and a final statement of position at the close of the hearing. Written post-hearing briefs and proposed findings are not permitted unless ordered by the presiding officer.

§2.1406 Initial decision—issuance and effectiveness.

(a) Where practicable, the presiding officer will render a decision from the bench. In rendering a decision from the bench, the presiding officer shall state the issues in the proceeding and make clear its findings of fact and conclusions of law on each issue. The presiding officer's decision and order must be reduced to writing and transmitted to the parties as soon as practicable, but not later than twenty (20) days, after the hearing ends. If a decision is not rendered from the bench, a written decision and order will be issued not later than thirty (30) days after the hearing ends. Approval of the Chief Administrative Judge must be obtained

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for an extension of these time periods, and in no event may a written decision and order be issued later than sixty (60) days after the hearing ends without the express approval of the Commission.

(b) The presiding officer's written decision must be served on the parties and filed with the Commission when issued.

(c) The presiding officer's initial decision is effective and constitutes the final action of the Commission twenty (20) days after the date of issuance of the written decision unless any party appeals to the Commission in accordance with §2.1407 or the Commission takes review of the decision sua sponte or the regulations in this part specify other requirements with regard to the effectiveness of decisions on certain applications.

§2.1407 Appeal and Commission review of initial decision.

(a)(1) Within fifteen (15) days after service of a written initial decision, a party may file a written appeal seeking the Commission's review on the grounds specified in paragraph (b) of this section. Unless otherwise authorized by law, a party must file an appeal with the Commission before seeking judicial review.

(2) An appeal under this section may not be longer than twenty (20) pages and must contain the following:

(i) A concise statement of the specific rulings and decisions that are being appealed;

(ii) A concise statement (including record citations) where the matters of fact or law raised in the appeal were previously raised before the presiding officer and, if they were not, why they could not have been raised;

(iii) A concise statement why, in the appellant's view, the decision or action is erroneous; and

(iv) A concise statement why the Commission should review the decision or action, with particular reference to the grounds specified in paragraph (b) of this section.

(3) Any other party to the proceeding may, within fifteen (15) days after service of the appeal, file an answer supporting or opposing the appeal. The answer may not be longer than twenty (20) pages and should concisely address