Nuclear Regulatory Commission

§ 10.23 Failure of individual to request a hearing.

(a) In the event the individual fails to file a timely written request for a hearing pursuant to §10.22, a recommendation as to the final action to be taken will be made by the Director, Division of Facilities and Security, through the Director, Office of Administration, to the Deputy Executive Director for Corporate Management and Chief Information Officer on the basis of the information in the possession of the NRC, including any answer filed by the individual.

(b) The Director, Office of Administration, may for good cause shown, at the request of the individual, extend the time for filing a written request for a hearing or for filing a written answer to the matters contained in the notification letter.

§ 10.24 Procedures for hearing and review.

(a) Upon receipt of a timely filed request for a hearing and answer complying with the requirements set forth in §10.22, the Director, Office of Administration, shall forthwith appoint a Hearing Examiner, and the General Counsel shall forthwith assign an NRC attorney to act as Hearing Counsel. The Director, Office of Administration, shall promptly notify the individual of the identity of the Hearing Examiner and proposed hearing date, which shall be selected with due regard for the convenience of the parties and their representatives.

(b) Within 72 hours of being notified of the identity of the Hearing Examiner, the individual may request that the Hearing Examiner be disqualified for cause by filing with the Director, Office of Administration, a written statement of the individual’s reasons for seeking disqualification. The time for filing the request may be extended by the Director, Office of Administration, for good cause shown. If the Director, Office of Administration, grants the request the procedures of paragraph (a) of this section and this paragraph shall be followed just as though there had been no prior appointment.

(c) The individual shall have the right to appear at the hearing before the Hearing Examiner, to be represented by counsel or other representative, to introduce documentary or other evidence, and to call, examine, and cross-examine witnesses, subject to the provisions and limitations set forth in this part.

§ 10.25 NRC Hearing Counsel.

(a) Hearing Counsel assigned pursuant to §10.24 will, before the scheduling of the hearing, review the information in the case and will request the presence of witnesses and the production of documents and other physical evidence relied upon by the Director, Division of Facilities and Security, in making a finding that a question exists regarding the eligibility of the individual for an NRC access authorization and/or an employment clearance in accordance with the provisions of this part. When the presence of a witness and the production of evidence and for witnesses to appear at the hearing by subpoena or otherwise.

(b) Hearing Counsel is authorized to consult directly with individual’s counsel or representative or the individual, if the individual is not so represented, for purposes of reaching mutual agreement upon arrangements for expeditious hearing of the case. Such arrangements may include clarification of issues and stipulations with respect to testimony and contents of documents and other physical evidence.
§ 10.26 Appointment of Hearing Examiner.

The appointment of a Hearing Examiner, pursuant to §10.24 of this part, shall be from a list of qualified attorneys possessing the highest degree of integrity, ability, and good judgment. To qualify, an attorney shall have an NRC "Q" access authorization and may be an employee of the NRC, its contractors, agents or licensees. However, no employee or consultant of the NRC shall serve as Hearing Examiner hearing the case of an employee (including a consultant) or applicant for employment with the NRC, nor shall any employee or consultant of an NRC contractor, agent or licensee serve as Hearing Examiner hearing the case of an employee (including a consultant) or an applicant for employment of that contractor, agent, or licensee. No Hearing Examiner shall be selected who has knowledge of the case or of any information relevant to the disposition of it, or who for any reason would be unable to issue a fair and unbiased recommendation.

§ 10.27 Prehearing proceedings.

(a) After the appointment of the Hearing Examiner, he or she shall be furnished the record in the case, which shall consist of the letter of notification, the request for hearing and its supporting answer, and the notice of hearing, if it has been issued, and any stipulations agreed to by the individual and the Hearing Counsel.

(b) The Hearing Examiner may on his or her own motion, or on that of either party, convene a prehearing conference with the Hearing Counsel and the individual and his or her counsel or representative, if any, for the purpose of clarifying the issues, identifying witnesses who may be called, identifying documents and other physical evidence that may be offered into evidence, and entering into stipulations of fact.

(c) The parties will be notified by the Hearing Examiner at least ten days in advance of the hearing of the time and place of the hearing. For good cause shown, the Hearing Examiner may order postponements or continuances from time to time. If, after due notice, the individual fails to appear at the hearing, or appears but is not prepared to proceed, the Hearing Examiner shall, unless good cause is shown, return the case to the Director, Division of Facilities and Security, who shall make a recommendation on final action to be taken, through the Director, Office of Administration, to the Deputy Executive Director for Corporate Management and Chief Information Officer on the basis of the information in the possession of the NRC.

§ 10.28 Conduct of hearing.

(a) The Hearing Examiner shall conduct the hearing in an orderly, impartial and decorous manner. Technical rules of evidence may be relaxed so that a full evidentiary record may be made based on all material and relevant facts. Hearsay evidence may be received at the