

Nuclear Regulatory Commission

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interlocutory and must await the end of the proceeding.

[50 FR 41671, Oct. 15, 1985; 50 FR 45398, Oct. 31, 1985]

§ 2.1117 Burden of proof.

The applicant bears the ultimate burden of proof (risk of non-persuasion) with respect to the contention in the proceeding. The proponent of the request for an adjudicatory hearing bears the burden of demonstrating under § 2.1115(b) that an adjudicatory hearing should be held.

[69 FR 2267, Jan. 14, 2004]

§ 2.1119 Applicability of other sections.

In proceedings subject to this part, the provisions of subparts A, C, and L of this part are also applicable, except where inconsistent with the provisions of this subpart.

[69 FR 2267, Jan. 14, 2004]

Subpart L—Informal Hearing Procedures for NRC Adjudications

SOURCE: 69 FR 2267, Jan. 14, 2004, unless otherwise noted.

§ 2.1200 Scope of subpart L.

The provisions of this subpart, together with subpart C of this part, govern all adjudicatory proceedings conducted under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act, and 10 CFR part 2, except for proceedings on the licensing of the construction and operation of a uranium enrichment facility, proceedings on an initial application for construction authorization for a high-level radioactive waste geologic repository at a geologic repository operations area noticed under §§ 2.101(f)(8) or 2.105(a)(5), proceedings on an initial application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, proceedings on enforcement matters unless all parties otherwise agree and request the application of Subpart L procedures, and proceedings for the direct or indirect transfer of control of an NRC license when the transfer requires prior approval of the NRC under the Commis-

sion's regulations, governing statutes, or pursuant to a license condition.

§ 2.1201 Definitions.

The definitions of terms contained in § 2.4 apply to this subpart unless a different definition is provided in this subpart.

§ 2.1202 Authority and role of NRC staff.

(a) During the pendency of any hearing under this subpart, consistent with the NRC staff's findings in its own review of the application or matter which is the subject of the hearing and as authorized by law, the NRC staff is expected to issue its approval or denial of the application promptly, or take other appropriate action on the underlying regulatory matter for which a hearing was provided. When the NRC staff takes its action, it shall notify the presiding officer and the parties to the proceeding of its action. That notice must include the NRC staff's position on the matters in controversy before the presiding officer with respect to the staff action. The NRC staff's action on the matter is effective upon issuance by the staff, except in matters involving:

(1) An application to construct and/or operate a production or utilization facility;

(2) An application for an amendment to a construction authorization for a high-level radioactive waste repository at a geologic repository operations area falling under either 10 CFR 60.32(c)(1) or 10 CFR part 63;

(3) An application for the construction and operation of an independent spent fuel storage installation (ISFSI) located at a site other than a reactor site or a monitored retrievable storage installation (MRS) under 10 CFR part 72; and

(4) 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 a proceeding under this subpart, except where:

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

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(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.

§ 2.1203 Hearing file; prohibition on discovery.

(a)(1) Within thirty (30) days of the issuance of the order granting requests for hearing/petitions to intervene and admitting contentions, the NRC staff shall file in the docket, present to the presiding officer, and make available to the parties to the proceeding a hearing file.

(2) The hearing file must be made available to the parties either by service of hard copies or by making the file available at the NRC Web site, <http://www.nrc.gov>.

(3) The hearing file also must be made available for public inspection and copying at the NRC Web site,

<http://www.nrc.gov>, and/or at the NRC Public Document Room.

(b) The hearing file consists of the application, if any, and any amendment to the application, and, when available, any NRC environmental impact statement or assessment and any NRC report related to the proposed action, as well as any correspondence between the applicant/licensee and the NRC that is relevant to the proposed action. Hearing file documents already available at the NRC Web site and/or the NRC Public Document Room when the hearing request/petition to intervene is granted may be incorporated into the hearing file at those locations by a reference indicating where at those locations the documents can be found. The presiding officer shall rule upon any issue regarding the appropriate materials for the hearing file.

(c) The NRC staff has a continuing duty to keep the hearing file up to date with respect to the materials set forth in paragraph (b) of this section and to provide those materials as required in paragraphs (a) and (b) of this section.

(d) Except as otherwise permitted by subpart C of this part, a party may not seek discovery from any other party or the NRC or its personnel, whether by document production, deposition, interrogatories or otherwise.

§ 2.1204 Motions and requests.

(a) General requirements. In proceedings under this subpart, requirements for motions and requests and responses to them are as specified in § 2.323.

(b) Requests for cross-examination by the parties. (1) In any oral hearing under this subpart, a party may file a motion with the presiding officer to permit cross-examination by the parties on particular admitted contentions or issues. The motion must be accompanied by a cross-examination plan containing the following information:

(i) A brief description of the issue or issues on which cross-examination will be conducted;

(ii) The objective to be achieved by cross-examination; and

(iii) The proposed line of questions that may logically lead to achieving the objective of the cross-examination.