

§ 2.329 Prehearing conference.

(a) Necessity for prehearing conference; timing. The Commission or the presiding officer may, and in the case of a proceeding on an application for a construction permit or an operating license for a facility of a type described in §§ 50.21(b) or 50.22 of this chapter or a testing facility, shall direct the parties or their counsel to appear at a specified time and place for a conference or conferences before trial. A prehearing conference in a proceeding involving a construction permit or operating license for a facility of a type described in §§ 50.21(b) or 50.22 of this chapter must be held within sixty (60) days after discovery has been completed or any other time specified by the Commission or the presiding officer.

(b) Objectives. The following subjects may be discussed, as directed by the Commission or the presiding officer, at the prehearing conference:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control so that the proceeding will not be protracted because of lack of management;

(3) Discouraging wasteful prehearing activities;

(4) Improving the quality of the hearing through more thorough preparation, and;

(5) Facilitating the settlement of the proceeding or any portions of it.

(c) Other matters for consideration. As appropriate for the particular proceeding, a prehearing conference may be held to consider such matters as:

(1) Simplification, clarification, and specification of the issues;

(2) The necessity or desirability of amending the pleadings;

(3) Obtaining stipulations and admissions of fact and the contents and authenticity of documents to avoid unnecessary proof, and advance rulings from the presiding officer on the admissibility of evidence;

(4) The appropriateness and timing of summary disposition motions under subparts G and L of this part, including appropriate limitations on the page length of motions and responses thereto;

(5) The control and scheduling of discovery, including orders affecting disclosures and discovery under the discovery provisions in subpart G of this part.

(6) Identification of witnesses and documents, and the limitation of the number of expert witnesses, and other steps to expedite the presentation of evidence, including the establishment of reasonable limits on the time allowed for presenting direct and, where permitted, cross-examination evidence;

(7) The disposition of pending motions;

(8) Settlement and the use of special procedures to assist in resolving any issues in the proceeding;

(9) The need to adopt special procedures for managing potentially difficult or protracted proceedings that may involve particularly complex issues, including the establishment of separate hearings with respect to any particular issue in the proceeding;

(10) The setting of a hearing schedule, including any appropriate limitations on the scope and time permitted for cross-examination where cross-examination is permitted; and

(11) Other matters that the Commission or presiding officer determines may aid in the just and orderly disposition of the proceeding.

(d) Reports. Prehearing conferences may be reported stenographically or by other means.

(e) Prehearing conference order. The presiding officer shall enter an order that recites the action taken at the conference, the amendments allowed to the pleadings and agreements by the parties, and the issues or matters in controversy to be determined in the proceeding. Any objections to the order must be filed by a party within five (5) days after service of the order. Parties may not file replies to the objections unless the presiding officer so directs. The filing of objections does not stay the decision unless the presiding officer so orders. The presiding officer may revise the order in the light of the objections presented and, as permitted by § 2.319(l), may certify for determination to the Commission any matter raised in the objections the presiding officer finds appropriate. The order controls

§2.330

the subsequent course of the proceeding unless modified for good cause.

§2.330 Stipulations.

Apart from any stipulations made during or as a result of a prehearing conference, the parties may stipulate in writing at any stage of the proceeding or orally during the hearing, any relevant fact or the contents or authenticity of any document. These stipulations may be received in evidence. The parties may also stipulate as to the procedure to be followed in the proceeding. These stipulations may, on motion of all parties, be recognized by the presiding officer to govern the conduct of the proceeding.

§2.331 Oral argument before the presiding officer.

When, in the opinion of the presiding officer, time permits and the nature of the proceeding and the public interest warrant, the presiding officer may allow, and fix a time for, the presentation of oral argument. The presiding officer will impose appropriate limits of time on the argument. The transcript of the argument is part of the record.

§2.332 General case scheduling and management.

(a) Scheduling order. The presiding officer shall, as soon as practicable after consulting with the parties by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that establishes limits for the time to file motions, conclude discovery, and take other actions in the proceeding. The scheduling order may also include:

(1) Modifications of the times for disclosures under §§2.336 and 2.704 and of the extent of discovery to be permitted;

(2) The date or dates for prehearing conferences, and hearings; and

(3) Any other matters appropriate in the circumstances of the proceeding.

(b) Modification of schedule. A schedule may not be modified except upon a finding by the presiding officer or the Commission of good cause. In making such a good cause determination, the presiding officer or the Commission

10 CFR Ch. I (1-1-05 Edition)

should take into account the following factors, among other things:

(1) Whether the requesting party has exercised due diligence to adhere to the schedule;

(2) Whether the requested change is the result of unavoidable circumstances; and

(3) Whether the other parties have agreed to the change and the overall effect of the change on the schedule of the case.

(c) Objectives of scheduling order. The scheduling order must have as its objectives proper case management purposes such as:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control so that the proceeding will not be protracted because of lack of management;

(3) Discouraging wasteful prehearing activities;

(4) Improving the quality of the hearing through more thorough preparation; and

(5) Facilitating the settlement of the proceeding or any portions thereof, including the use of Alternative Dispute Resolution, when and if the presiding officer, upon consultation with the parties, determines that these types of efforts should be pursued.

(d) Effect of NRC staff's schedule on scheduling order. In establishing a schedule, the presiding officer shall take into consideration the NRC staff's projected schedule for completion of its safety and environmental evaluations to ensure that the hearing schedule does not adversely impact the staff's ability to complete its reviews in a timely manner. Hearings on safety issues may be commenced before publication of the NRC staff's safety evaluation upon a finding by the presiding officer that commencing the hearings at that time would expedite the proceeding. Where an environmental impact statement (EIS) is involved, hearings on environmental issues addressed in the EIS may not commence before the issuance of the final EIS. In addition, discovery against the NRC staff on safety or environmental issues, respectively, should be suspended until the staff has issued the SER or EIS, unless the presiding officer finds that the