

## § 2.605

(d) To the maximum extent practicable, the membership of the atomic safety and licensing board designated to preside in the proceeding on the remaining unresolved issues pursuant to the supplemental notice of hearing will be the same as the membership designated to preside in the initial notice of hearing on site suitability issues.

[42 FR 22885, May 5, 1977, as amended by 69 FR 2256, Jan. 14, 2004]

### § 2.605 Additional considerations.

(a) The Commission will not conduct more than one review of site suitability issues with regard to a particular site prior to filing and review of part two of the application described in § 2.101(a-1) of this part.

(b) The Commission, upon its own initiative, or upon the motion of any party to the proceeding filed at least sixty (60) days prior to the date of the commencement of the evidentiary hearing on site suitability issues, may decline to initiate an early hearing or render an early partial decision on any issue or issues of site suitability:

(1) In cases where no partial decision on the relative merits of the proposed site and alternative sites under subpart A of part 51 is requested, upon determination that there is a reasonable likelihood that further review would identify one or more preferable alternative sites and the partial decision on one or more site suitability issues would lead to an irreversible and irretrievable commitment of resources prior to the submittal of the remainder of the information required by § 50.30(f) of this chapter that would prejudice the later review and decision on such alternative sites; or

(2) In cases where it appears that an early partial decision on any issue or issues of site suitability would not be in the public interest considering (i) the degree of likelihood that any early findings on those issues would retain their validity in later reviews, (ii) the objections, if any, of cognizant state or local government agencies to the conduct of an early review on those issues, and (iii) the possible effect on the public interest and the parties of having

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an early, if not necessarily conclusive, resolution of those issues.

[42 FR 22885, May 5, 1977, as amended at 49 FR 9401, Mar. 12, 1984]

### § 2.606 Partial decisions on site suitability issues.

(a) The provisions of §§ 2.331, 2.339, 2.340(b), 2.343, 2.712, and 2.713 shall apply to any partial initial decision rendered in accordance with this subpart. Section 2.340(c) shall not apply to any partial initial decision rendered in accordance with this subpart. A limited work authorization may not be issued under 10 CFR 50.10(e) and no construction permit may be issued without completion of the full review required by section 102(2) of the National Environmental Policy Act of 1969, as amended, and subpart A of part 51 of this chapter. The authority of the Commission to review such a partial initial decision sua sponte, or to raise sua sponte an issue that has not been raised by the parties, will be exercised within the same time period as in the case of a full decision relating to the issuance of a construction permit.

(b)(1) A partial decision on one or more site suitability issues pursuant to the applicable provisions of part 50, subpart A of part 51, and part 100 of this chapter issued in accordance with this subpart shall (i) clearly identify the site to which the partial decision applies and (ii) indicate to what extent additional information may be needed and additional review may be required to enable the Commission to determine in accordance with the provisions of the Act and the applicable provisions of the regulations in this chapter whether a construction permit for a facility to be located on the site identified in the partial decision should be issued or denied.

(2) Following completion of Commission review of the partial initial decision of the Atomic Safety and Licensing Board, after hearing, on the site suitability issues, the partial decision shall remain in effect either for a period of five years or, where the applicant for the construction permit has made timely submittal of the information required to support the application as provided in § 2.101(a-1), until the proceeding for a permit to construct a

facility on the site identified in the partial decision has been concluded,<sup>3</sup> unless the Commission or Atomic Safety and Licensing Board, upon its own initiative or upon motion by a party to the proceeding, finds that there exists significant new information that substantially affects the earlier conclusions and reopens the hearing record on site suitability issues. Upon good cause shown, the Commission may extend the five year period during which a partial decision shall remain in effect for a reasonable period of time not to exceed one year.

[42 FR 22885, May 5, 1977, as amended at 49 FR 9401, Mar. 12, 1984; 69 FR 2256, Jan. 14, 2004]

### Subpart G—Rules for Formal Adjudications

SOURCE: 69 FR 2256, Jan. 14, 2004, unless otherwise noted.

#### § 2.700 Scope of subpart G.

The provisions of this subpart apply to and supplement the provisions set forth in subpart C of this part with respect to enforcement proceedings initiated under subpart B of this part unless otherwise agreed to by the parties, proceedings conducted with respect to the initial licensing of a uranium enrichment facility, proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits for nuclear power reactors, where the presiding officer by order finds that resolution of the contention necessitates resolution of: issues of material fact relating to the occurrence of a past event, where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matter, proceedings for initial applications for construction authorization for high-level radioactive waste repository noticed under §§ 2.101(f)(8) or 2.105(a)(5), proceedings for initial applications for a license to

<sup>3</sup>The partial decision on site suitability issues shall be incorporated in the decision regarding issuance of a construction permit to the extent that it serves as a basis for the decision on a specific site issue(s).

receive and possess high-level radioactive waste at a geologic repository operations area, and any other proceeding as ordered by the Commission. If there is any conflict between the provisions of this subpart and those set forth in subpart C of this part, the provisions of this subpart control.

#### § 2.701 Exceptions.

Consistent with 5 U.S.C. 554(a)(4) of the Administrative Procedure Act, the Commission may provide alternative procedures in adjudications to the extent that there is involved the conduct of military or foreign affairs functions.

#### § 2.702 Subpoenas.

(a) On application by any party, the designated presiding officer or, if he or she is not available, the Chief Administrative Judge, or other designated officer will issue subpoenas requiring the attendance and testimony of witnesses or the production of evidence. The officer to whom application is made may require a showing of general relevance of the testimony or evidence sought, and may withhold the subpoena if such a showing is not made. However, the officer may not determine the admissibility of evidence.

(b) Every subpoena will bear the name of the Commission, the name and office of the issuing officer and the title of the hearing, and will command the person to whom it is directed to attend and give testimony or produce specified documents or other things at a designated time and place. The subpoena will also advise of the quashing procedure provided in paragraph (f) of this section.

(c) Unless the service of a subpoena is acknowledged on its face by the witness or is served by an officer or employee of the Commission, it must be served by a person who is not a party to the hearing and is not less than eighteen (18) years of age. Service of a subpoena must be made by delivery of a copy of the subpoena to the person named in it and tendering that person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Commission, fees and mileage need not be tendered and the subpoena may be served by registered mail.