

## Nuclear Regulatory Commission

## § 2.321

order related to the subject matter of the pending proceeding may be modified by the presiding officer as appropriate for the purpose of the proceeding.

### § 2.319 Power of the presiding officer.

A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay and to maintain order. The presiding officer has all the powers necessary to those ends, including the powers to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas authorized by law, including subpoenas requested by a participant for the attendance and testimony of witnesses or the production of evidence upon the requestor's showing of general relevance and reasonable scope of the evidence sought;

(c) Consolidate parties and proceedings in accordance with §§ 2.316 and 2.317 and/or direct that common interests be represented by a single spokesperson;

(d) Rule on offers of proof and receive evidence. In proceedings under this part, strict rules of evidence do not apply to written submissions. However, the presiding officer may, on motion or on the presiding officer's own initiative, strike any portion of a written presentation or a response to a written question that is irrelevant, immaterial, unreliable, duplicative or cumulative.

(e) Restrict irrelevant, immaterial, unreliable, duplicative or cumulative evidence and/or arguments;

(f) Order depositions to be taken as appropriate;

(g) Regulate the course of the hearing and the conduct of participants;

(h) Dispose of procedural requests or similar matters;

(i) Examine witnesses;

(j) Hold conferences before or during the hearing for settlement, simplification of contentions, or any other proper purpose;

(k) Set reasonable schedules for the conduct of the proceeding and take actions reasonably calculated to maintain overall schedules;

(l) Certify questions to the Commission for its determination, either in the

presiding officer's discretion, or on motion of a party or on direction of the Commission;

(m) Reopen a proceeding for the receipt of further evidence at any time before the initial decision;

(n) Appoint special assistants from the Atomic Safety and Licensing Board Panel under § 2.322;

(o) Issue initial decisions as provided in this part;

(p) Dispose of motions by written order or by oral ruling during the course of a hearing or prehearing conference. The presiding officer should ensure that parties not present for the oral ruling are notified promptly of the ruling;

(q) Issue orders necessary to carry out the presiding officer's duties and responsibilities under this part; and

(r) Take any other action consistent with the Act, this chapter, and 5 U.S.C. 551-558.

### § 2.320 Default.

If a party fails to file an answer or pleading within the time prescribed in this part or as specified in the notice of hearing or pleading, to appear at a hearing or prehearing conference, to comply with any prehearing order entered by the presiding officer, or to comply with any discovery order entered by the presiding officer, the Commission or the presiding officer may make any orders in regard to the failure that are just, including, among others, the following:

(a) Without further notice, find the facts as to the matters regarding which the order was made in accordance with the claim of the party obtaining the order, and enter the order as appropriate; or

(b) Proceed without further notice to take proof on the issues specified.

### § 2.321 Atomic Safety and Licensing Boards.

(a) The Commission or the Chief Administrative Judge may establish one or more Atomic Safety and Licensing Boards, each comprised of three members, one of whom will be qualified in the conduct of administrative proceedings and two of whom have such technical or other qualifications as the

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Commission or the Chief Administrative Judge determines to be appropriate to the issues to be decided. The members of an Atomic Safety and Licensing Board shall be designated from the Atomic Safety and Licensing Board Panel established by the Commission. In proceedings for granting, suspending, revoking, or amending licenses or authorizations as the Commission may designate, the Atomic Safety and Licensing Board shall perform the adjudicatory functions that the Commission determines are appropriate.

(b) The Commission or the Chief Administrative Judge may designate an alternate qualified in the conduct of administrative proceedings, or an alternate having technical or other qualifications, or both, for an Atomic Safety and Licensing Board established under paragraph (a) of this section. If a member of a board becomes unavailable, the Commission or the Chief Administrative Judge may constitute the alternate qualified in the conduct of administrative proceedings, or the alternate having technical or other qualifications, as appropriate, as a member of the board by notifying the alternate who will, as of the date of the notification, serve as a member of the board. If an alternate is unavailable or no alternates have been designated, and a member of a board becomes unavailable, the Commission or Chief Administrative Judge may appoint a member of the Atomic Safety and Licensing Board Panel who is qualified in the conduct of administrative proceedings or a member having technical or other qualifications, as appropriate, as a member of the Atomic Safety and Licensing Board by notifying the appointee who will, as of the date of the notification, serve as a member of the board.

(c) An Atomic Safety and Licensing Board has the duties and may exercise the powers of a presiding officer as granted by § 2.319 and otherwise in this part. Any time when a board is in existence but is not actually in session, any powers which could be exercised by a presiding officer or by the Chief Administrative Judge may be exercised with respect to the proceeding by the chairman of the board having jurisdic-

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tion over it. Two members of an Atomic Safety and Licensing Board constitute a quorum if one of those members is the member qualified in the conduct of administrative proceedings.

### § 2.322 Special assistants to the presiding officer.

(a) In consultation with the Chief Administrative Judge, the presiding officer may, at his or her discretion, appoint personnel from the Atomic Safety and Licensing Board Panel established by the Commission to assist the presiding officer in taking evidence and preparing a suitable record for review. The appointment may occur at any appropriate time during the proceeding but must, at the time of the appointment, be subject to the notice and disqualification provisions as described in § 2.313. The special assistants may function as:

(1) Technical interrogators in their individual fields of expertise. The interrogators shall study the written testimony and sit with the presiding officer to hear the presentation and, where permitted in the proceeding, the cross-examination by the parties of all witnesses on the issues of the interrogators' expertise. The interrogators shall take a leading role in examining the witnesses to ensure that the record is as complete as possible;

(2) Upon consent of all the parties, special masters to hear evidentiary presentations by the parties on specific technical matters, and, upon completion of the presentation of evidence, to prepare a report that would become part of the record. Special masters may rule on evidentiary issues brought before them, in accordance with § 2.333. Appeals from special masters' rulings may be taken to the presiding officer in accordance with procedures established in the presiding officer's order appointing the special master. Special masters' reports are advisory only; the presiding officer retains final authority with respect to the issues heard by the special master;

(3) Alternate Atomic Safety and Licensing Board members to sit with the presiding officer, to participate in the evidentiary sessions on the issue for which the alternate members were designated by examining witnesses, and to