

Legal Challenges in US New Reactor Licensing

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Legal Requirement for “Hearing”

US Atomic Energy Act of 1954 (as amended) § 189a.(1)(A)

Discretionary Contested Hearing

In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit . . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

Mandatory Uncontested Hearing

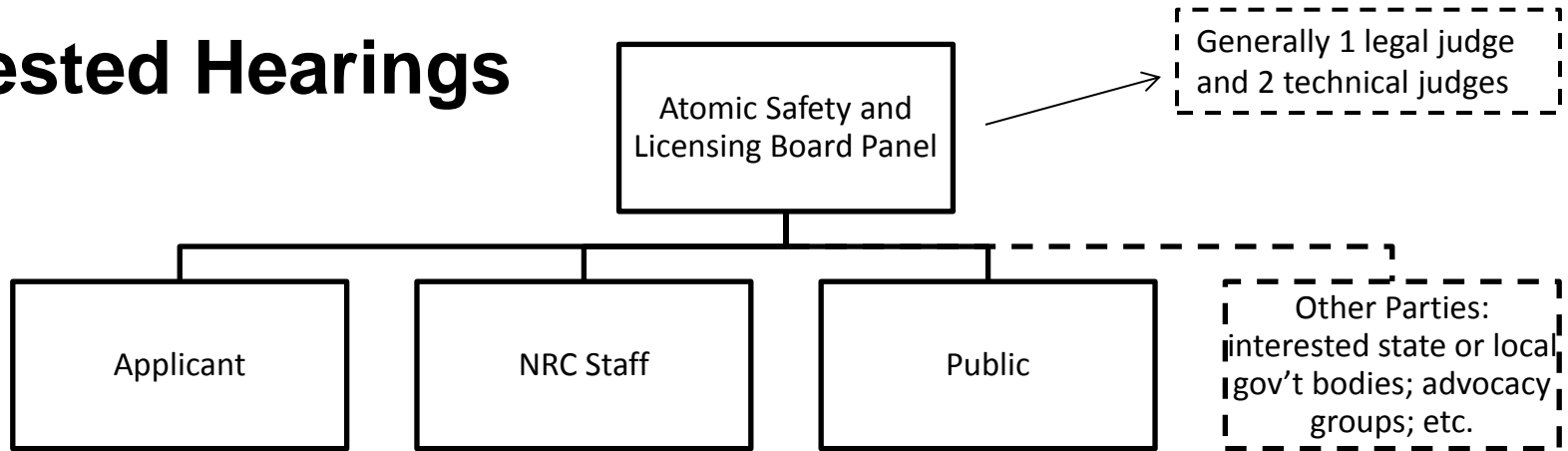
The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 103 or 104b. for a construction permit for a facility . . .

Stages for Administrative Hearings

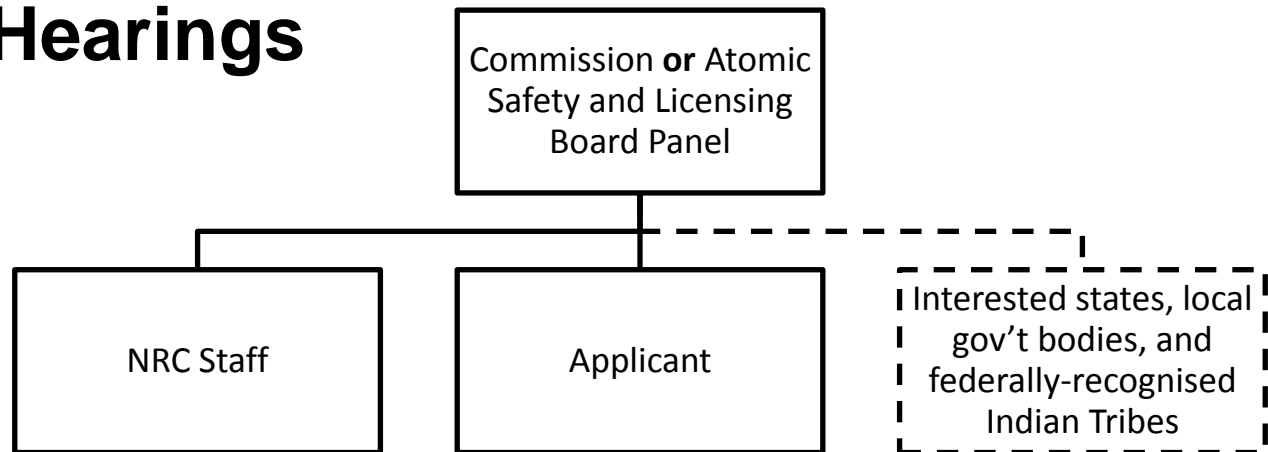
- Early Site Permit (ESP)
 - Contested Hearing
 - Mandatory Hearing
- Combined Licence (COL)
 - Contested Hearing
 - Mandatory Hearing
- Inspections, Test, Analyses and Acceptance Criteria (ITAAC)
 - Contested Hearing

Types of Administrative Hearings

Contested Hearings



Mandatory Hearings



Scope of Contested Hearing

- Participation is granted only to those persons who can establish “standing” (i.e. a specific cognizable interest that may be affected by the proceeding and who proffer an admissible contention – or issue – for litigation)
- Discovery, pleadings and motion practice
- Opportunity to request cross-examination in appropriate circumstances
- Oral evidentiary hearing on material disputes of fact

Scope of Mandatory Hearing

- Independent “hard look” at NRC staff safety and environmental findings
- NOT meant to replicate NRC staff work
- Give appropriate deference to NRC staff work
- Probe the logic and evidence supporting NRC staff findings and decide whether the findings are sufficient to support license issuance (i.e., a “sufficiency review”)

US NRC Adjudicatory Process (new reactors)

	Early Site Permit	Combined License	ITAAC
Contested Hearing	<ul style="list-style-type: none"> Initial stage admin. hearing by the ASLBP ASLBP appeals go to the Commission Review of Commission at the US Courts of Appeals Review of Appeals Court decisions at to the US Supreme Court 	← SAME AS LEFT	<ul style="list-style-type: none"> Still to be determined who will preside over the initial stage admin. hearing (SECY-15-0010)
Mandatory Hearing	<p style="text-align: center;">↑</p> <p style="text-align: center;">SAME AS ABOVE</p>	<ul style="list-style-type: none"> Commission conducts hearing Review of Commission at the US Courts of Appeals Review of Appeals Court decisions at to the US Supreme Court 	NONE

Contested Hearings Conducted (ESP)

Atomic Safety and Licensing Board (presiding)

Clinton

- Contentions raised by third party intervenors
- Issues resolved in pre-hearing filings and did not go to hearing

Grand Gulf

- No petitions for intervention / no hearing

North Anna

- Contentions raised by third party intervenors
- Issues resolved in pre-hearing filings and did not go to hearing

Vogtle

- 1 group of joint intervenors; 8 proposed envir. contentions; 3 admitted for hearing
- 16-19 March 2009: evidentiary hearing held
- ASLBP ruled against joint intervenors on all contentions; joint intervenors petitioned Commission for review
- January 2010: Commission denied petition for review (CLI-10-05)

Mandatory Hearings Conducted (ESP)

Atomic Safety and Licensing Board (presiding)

Clinton <ul style="list-style-type: none">• Staff review complete: July 2006• Board decision: December 2006• Commission decision: March 2007 (CLI-07-12)	Grand Gulf <ul style="list-style-type: none">• Staff review complete: April 2006• Board decision: January 2007• Commission decision: March 2007 (CLI-07-14)
North Anna <ul style="list-style-type: none">• Staff review complete: Dec. 2006• Board decision: June 2007• Commission decision: Nov. 2007 (CLI-07-27)	Vogtle <ul style="list-style-type: none">• Staff review complete: Feb. 2009• Board decision: August 2009• Commission decision: none (ESP issued August 2009)

US NRC COL Licensing Process

New Reactor Licensing Process



Mandatory Hearings Conducted (COL)

Commission (presiding)

- Vogtle, Units 3 and 4 (AP1000)
 - Staff review complete: August 2011
 - Commission hearing: September 2011
 - Commission decision: February 2012
- Summer, Units 2 and 3 (AP1000)
 - Staff review complete: August 2011
 - Commission hearing: October 2011
 - Commission decision: March 2012
- Fermi, Unit 3 (ESBWR)
 - Staff review complete: November 2014
 - Commission hearing: February 2015
 - Commission decision: TBD

**Next Potential COL
Mandatory Hearing:**
William States Lee III,
Units 1 and 2 (AP1000)
– April 2016

US Court of Appeals Challenges (COL)

- **11 August 2011** – four public interest organisations filed substantially similar motions to reopen the closed hearing record in the Vogtle COL proceeding and admit a new Fukushima-event-based contention
- **18 October 2011** – ASLB denied the motions as premature
- **2 November 2011** – petitioners appealed the ASLB's decision to the Commission
- **9 February 2012** – Commission approves issuance of Vogtle COL
- **16 February 2012** – petitioners seek to stay the effectiveness of Vogtle COL licensing decision
- **16 March 2012** – Commission denied the Fukushima motion to reopen the closed hearing record

US Court of Appeals Challenges (COL)

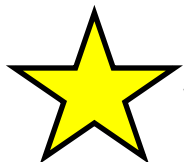
- **20 March 2012** – petitioners appealed the decision to the DC Circuit Court of Appeals in *Blue Ridge Environmental Defense League v. NRC*, challenging the NRC's issuance of the Vogtle COL. Petitioners argued that the NRC's environmental review was deficient for failure to take adequate account of the Fukushima accident in Japan.
- **16 April 2012** – Commission denied motion to stay effectiveness of Vogtle COL licensing decision
- **18 April 2012** – Petitioners sought a judicial stay pending appellate review
- **11 July 2012** – DC Circuit Court of Appeals denied the stay.
- **14 May 2013** – DC Circuit Court denied the Fukushima petition for review. Among other things, the court found that NRC's denial of petitioners' contention was "well-supported by the record and represents a reasonable interpretation of NRC's contention specificity regulations", and also rejected petitioners' claim that the Commission's Fukushima Task Force Report constituted "new information" requiring supplementation of the Vogtle Environmental Impact Statement.
- **July 23, 2013** – DC Circuit Court denied a petition for rehearing

Inspections, Tests, Analyses and Acceptance Criteria (ITAAC)

- **AEA § 185b.** – NRC must make a predictive finding that facility will be constructed and operated in accordance with the license, the AEA and NRC rules and regulations. ITAAC are the vehicle for verifying this prior to operation of the facility
- NRC staff make a “**50.103(g)**” **finding** that all the acceptance criteria are met prior to commencement of operation
- **NO mandatory hearing requirement**
- **AEA § 189a.(1)(A) Discretionary / Contested Hearing** – public is provided with an opportunity to request a hearing on the licensee’s conformance with the acceptance criteria
- Granting a hearing request triggers the Commission’s obligation to determine whether **interim operation** is appropriate. AEA § 189a.(1)(B)(iii) provides that the Commission *shall allow* interim operation if it determines, after considering the petitioner’s prima facie showing and any answers thereto, that there will be reasonable assurance of adequate protection of the public health and safety during a period of interim operation.

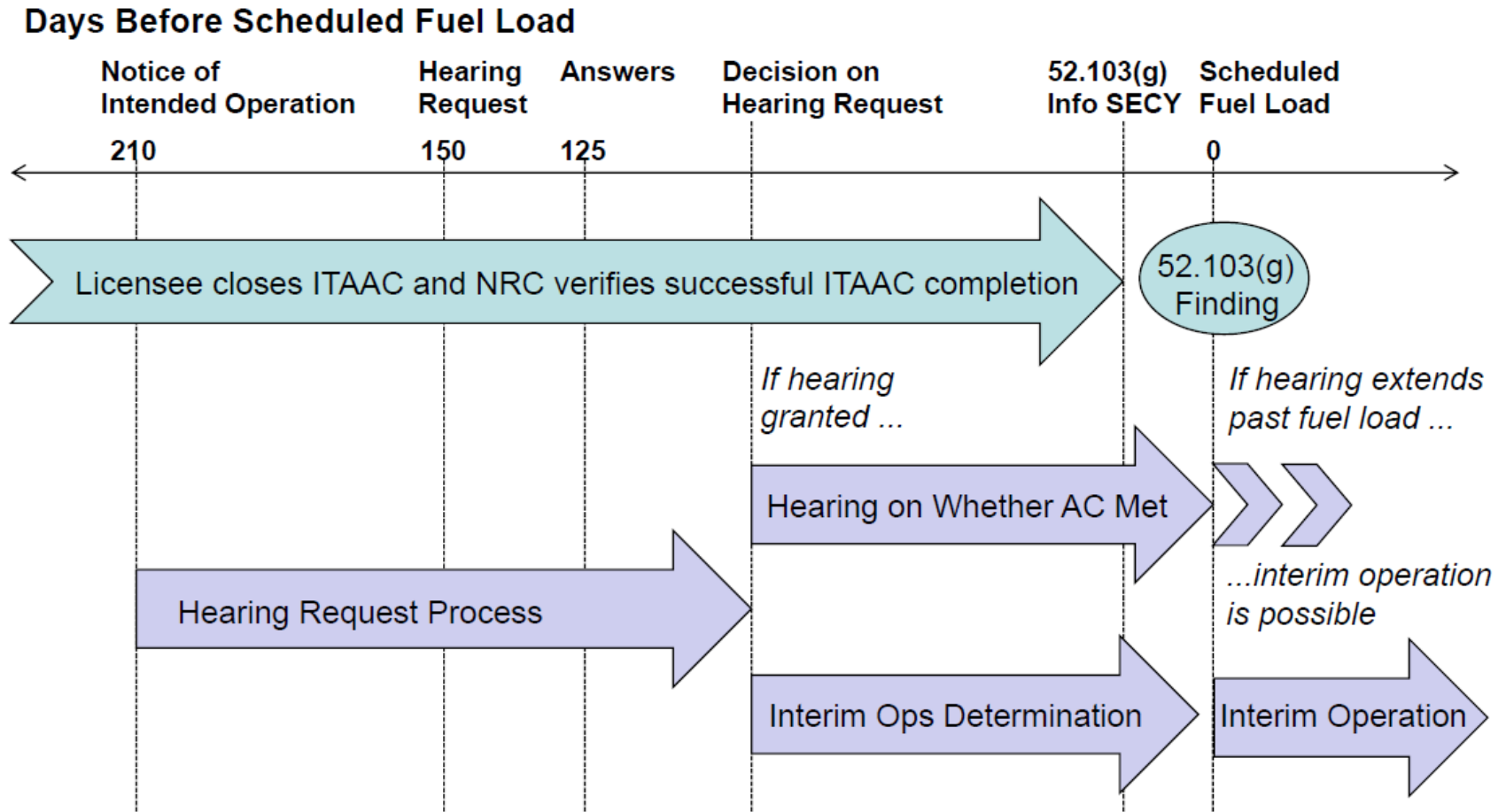
ITAAC Contested Hearings

- Notice of opportunity for hearing published at least 180 days before scheduled fuel load
- Hearing requests “*shall show, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety*”. AEA § 189a.(1)(B)(ii).
- A decision on the issues raised by the hearing request must be rendered “*to the maximum possible extent*” within 180 days of the notice of intended operation or by scheduled fuel load, whichever is later.
AEA § 189a.(1)(B)(v).



Satisfying the AEA’s goals for timely completion of the ITAAC hearings will require the NRC to complete the ITAAC hearings much faster than it completes other hearings → but interim operation is possible.

Parallel Paths (ITAAC Closure / Hearing / Interim Operation)



See: SECY-15-0010, "Final Procedures for Hearings on Conformance with the Acceptance Criteria in Combined Licenses" (20 January 2015), available at: <http://pbadupws.nrc.gov/docs/ML1434/ML14343A747.pdf>

Takeaways on the US Hearing Process

CONS

- **TIMING:** Although the NRC's hearing process has not yet added considerable time to the issuance of an ESP or COL, the possibility exists that *it could*.
- **COST:** While the timing has not yet been an issue, litigation creates a financial and personnel burden on all parties involved – government(s), applicants and private parties.

PROS:

- **DEEPER REVIEW:** Mandatory hearings have led to increased safety at new facilities (ex: squib valve surveillance programme license condition for AP1000s)
- **PUBLIC PARTICIPATION:** Numerous opportunities for hearings allow full and fair treatment of safety and environmental concerns of the public

Thank You Very Much

Contested Hearings Conducted (COL)

Atomic Safety and Licensing Board (presiding)

- **Calvert Cliffs, Unit 3** – foreign ownership, control and domination
 - Applicant is domestic subsidiary of UniStar Nuclear Energy, LLC that at the time of the application was owned (through intermediate parent companies) ~50% by Constellation Energy Group, Inc. (American) and EDF. In 2010, EDF acquired Constellation's 50% interest, thus making the applicant 100% foreign owned
 - Intervenor challenged COL application on foreign ownership grounds
 - ASLB agreed with intervenor (LBP-12-19)
 - Commission denied applicant's appeal, but directed the staff to provide a "fresh assessment on issues related to foreign ownership" (CLI-13-04 and SRM-SECY-12-0168)
 - Matter still under consideration by Commission (SECY-14-0089)