

December 23, 2010

MEMORANDUM TO: Stephen G. Burns
General Counsel

Brooke Poole, Director
Office of Commission Appellate Adjudication

R. W. Borchardt
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS – SECY-10-0082 – MANDATORY
HEARING PROCESS FOR COMBINED LICENSE APPLICATION
PROCEEDINGS UNDER 10 C.F.R. PART 52

The Commission approves the following procedures with respect to the conduct of mandatory hearings for combined license (COL) proceedings. After gaining experience with conducting two mandatory hearings, the staff should revisit these mandatory hearing procedures to evaluate their effectiveness and efficiency, and suggest any changes to improve the mandatory hearing process.

1. The notice of hearing for the mandatory hearing should state that the Commission will determine whether the Staff's review has been adequate to support the findings set forth in 10 C.F.R. §§ 52.97 and 51.107.
2. The notice of hearing for the mandatory hearing should invite interested governmental entities, including any interested State, local government body, or affected, federally-recognized Indian Tribe, to submit written statements to the Commission and should include the "*Notice Language under Option 1*" proposed in SECY-10-0082.
3. The mandatory hearing process should begin upon completion of the Staff's final environmental impact statement (FEIS) and final safety evaluation report (FSER) for the COL, and not wait for either the design certification rulemaking or the contested proceeding to be completed. Concurrent with the issuance of the later of the FSER or FEIS, the staff will provide a publicly-available SECY information paper to the Commission with content as described in this SRM.

Pre-filed testimony to the Commission shall, at a minimum, include answers to the Commission's pre-hearing questions, if applicable, identification of witnesses for the oral hearing, and any additional views that the parties wish to provide. The Staff's

information paper shall serve as its pre-filed testimony, except to the extent that the Staff must identify witnesses and answer any Commission pre-hearing questions.

4. The objective for completion of the mandatory hearing, including issuance of a final Commission decision, should be no later than four months from the issuance of the later of the FSER or FEIS for the COL. However, if the COL references a pending design certification rulemaking, the final Commission decision on the mandatory hearing will not be issued until immediately following affirmation of the referenced final design certification rule.
5. The final decision from the mandatory hearing will take the form of a Commission adjudicatory decision.
6. OGC (in consultation with OCAA, as appropriate) should update the section of the Internal Commission Procedures entitled "Conduct of Mandatory Hearings on Applications for Combined Licenses," as necessary. The Internal Commission Procedures should include hearing milestones, as well as a template for the Notice of Hearing as set forth in this SRM. The proposed revisions should be submitted to the Commission for its review and approval. In addition, the staff should ensure that these procedures are appropriately communicated to external stakeholders.
7. The staff should update the publicly available COL application review schedules to reflect the milestones and target dates for Commission action on the mandatory hearing.
8. The staff should develop a generic template for the Staff's information paper that will be provided to the Commission prior to the mandatory hearing. The template should be provided to the Commission for information. At a minimum, the Staff's information paper should:
 - a. Address each of the Findings in § 52.97(a) and § 51.107(a), and provide an adequate basis for the Commission to conclude that each of these Findings can be made. The Staff's information paper should not recap all matters in the safety or environmental review process, particularly routine aspects of the review where there was no real complication or controversy. Rather, the information paper should be focused on non-routine matters.
 - b. In focusing on non-routine matters, the areas of particular importance in supporting the Part 51 and 52 Findings would be any unique features of the facility or novel issues that arose as part of the review process. However, the Staff's information paper should exclude matters that were previously addressed and resolved in the context of the other reviews undertaken as part of the Part 52 process, e.g., as part of an earlier Early Site Permit (ESP) review, an earlier reference COL review, or have been (or are being) addressed in the context of a design certification rulemaking.
 - c. Include other aspects of the staff's review that are important for the Commission to make its final decision, but are not necessarily tied to specific Findings. For instance, if an applicable design certification rulemaking is

currently ongoing, the Staff's information paper should include a brief summary of any significant technical or policy issues that the staff believes would be of significant Commission interest and an estimate of the completion date of that rulemaking.

(EDO)

(SECY Suspense: 3 months from date of this SRM)

cc: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
CFO
OCA
OPA