



RIC 2012

Mandatory Hearings at the NRC Perspectives from Participants and Decision-Makers

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Atomic Safety and Licensing Board
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First Wave of Mandatory Hearings

- The first wave of modern day mandatory hearings began in CY 2004.
- What was probably the last hearing prior to 2004 occurred in CY 1989.

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- The year 2004 saw the beginning of mandatory hearings for:
 - LES
 - Clinton ESP
 - Grand Gulf ESP
 - North Anna ESP

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The Early Site Permit Hearings

- Since the three Applications for ESP's were the first applications under the new 10 CFR 52, the ASLBP chose to appoint 3 boards with the same membership to initially manage the hearings.
- Later the three boards' membership was changed to create distinct panels.

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Conduct of the hearing

- As the process began, it became apparent that additional guidance was needed from the Commission on the scope and conduct of the mandatory hearing.
- The various Boards first asked the parties for suggestions on the scope and conduct but received conflicting suggestions.

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- To resolve these issues, the Chief Judge certified six questions to the Commission (LBP-05-07, 61 NRC 188 (2005)).
- The Commission responded in CLI-05-07, 62 NRC 5.

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Scope and conduct

- Boards are to take an independent “hard look” at the safety and environmental findings.
- Boards are to probe the logic and evidence supporting NRC staff findings and decide whether those findings are sufficient to support license issuance.

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- Contested and uncontested designations apply issue-by-issue, and not to proceedings-at-large.
- As a general matter, licensing boards *should review contested and uncontested issues* differently, giving the NRC staff considerably more deference on uncontested issues.

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- The Boards’ review of a contested issue is quite different from their review of an uncontested one, and this difference is reflected, to a considerable extent, in the *depth* of the boards’ review.
- Boards should conduct a simple “sufficiency” review of uncontested issues, not a *de novo* review.

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- Boards have authority:
 - to ask clarifying questions of witnesses,
 - to order the record to be supplemented,
 - to reject the proposed action,
 - or even to deny the construction permit outright,
 - and to set conditions on the approval of the construction permit.

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- Boards must “[i]ndependently consider the final balance among conflicting factors contained in the record of the proceeding.”
- Boards to weigh benefits against costs.
- Boards have considerable flexibility as to the actual procedure to be followed at mandatory hearings.

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Format for ESP Mandatory Hearings

- Could be divided into five phases:
- Review of DRAFT documents
 - Review of final EIS and SER
 - Posing of written questions to the Staff and Applicant
 - Hearing
 - Order

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	Clinton	North Anna	Grand Gulf	Vogtle
Order Issued Admitting Contentions	08/06/2004	08/06/2004	08/06/2004	03/12/2007
Order Resolving Contested Hearing	07/28/2005	10/24/2006	08/06/2004	06/22/2009
Order Resolving Mandatory Hearing	12/28/2006	06/29/2007	01/26/2007	08/17/2009
Delta Conclusion of Contested Case and Mandatory Case	17 months	8 months	29 months	2 months

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	LES	USEC	AREVA ¹
Order Issued Admitting Contentions	07/19/2004	10/07/2005**	
Order Resolving Contested Hearing	05/31/2006		
Order Resolving Mandatory Hearing	06/23/2006	04/13/2007	10/07/2011
Delta Conclusion of Contested Case and Mandatory Case	1 month	18 months	N/A

¹Notice of hearing issued 7/23/2009, no petitions filed.

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	Clinton	North Anna	Grand Gulf	Vogtle
	Hours/FTEs	Hours/FTEs	Hours/FTEs	Hours/FTEs
FY 2009				935/6
FY 2008				860/6
FY 2007 Hours	1036/7	1301/9	638/4	105/1
FY 2006 Hours	1309/9	195/2	622/4	0
FY 2005 Hours	856/6	220/2	0	0

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	LES	USEC	AREVA
	Hours/FTEs	Hours/FTEs	Hours/FTEs
FY 2012 Hours			126/0.1
FY 2011 Hours			2,540/1.8
FY 2010 Hours			469/0.3
FY 2007 Hours		820/5	
FY 2006 Hours	1474/1.0	433/3	
FY 2005 Hours	1200/8	474/3	

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Conclusions

- For the ESP mandatory hearings, the Boards reinvented the wheel!
- The conduct of a thorough mandatory hearing is time-consuming, requiring between 1000 and 2000 hours of effort on the part of the Board.

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