

## TABLE OF CONTENTS

(References are to Chapter Title and Page Number.)

<u>Chapter</u>	<u>Abbreviation</u>
Policy Statements	PS
Applications for License/Permit	Ap
Prehearing Matters	Pre
Hearings	H
Post Hearing Matters	APP
General Matters	GM

### **NOTE TO USERS**

### **POLICY STATEMENTS**

- Camera Coverage of Hearings (1978)
- Investigations, Inspections, and Adjudicatory Proceedings (1984)
- Alternative Means of Dispute Resolution (1992)
- Conduct of Adjudicatory Proceedings (1998)
- Conduct of New Reactor License Proceedings (2008)

<b>1.0</b>	<b>APPLICATION FOR LICENSE/PERMIT .....</b>	Ap 1
<b>1.1</b>	<b><u>Applicants</u>.....</b>	Ap 1
<b>1.2</b>	<b><u>Renewal Applications</u>.....</b>	Ap 1
<b>1.3</b>	<b><u>Applications for Early Site Review</u>.....</b>	Ap 2
<b>1.4</b>	<b><u>Application for License Transfer</u>.....</b>	Ap 3
<b>1.5</b>	<b><u>Form of Application for Construction Permit/Operating License</u>.....</b>	Ap 3
1.5.1	Form of Application for Initial License/Permit.....	Ap 3
1.5.2	Form of Renewal Application for License/Permit (Reserved) .....	Ap 3
<b>1.6</b>	<b><u>Contents of Application</u> .....</b>	Ap 4
1.6.1	Incomplete Applications .....	Ap 4
1.6.2	Material False Statements .....	Ap 4
<b>1.7</b>	<b><u>Docketing of License/Permit Application</u> .....</b>	Ap 7
<b>1.8</b>	<b><u>Notice of License/Permit Application</u> .....</b>	Ap 7
1.8.1	Publication of Notice in Federal Register.....	Ap 7
1.8.2	Amended Notice After Addition of New Owners (Reserved) .....	Ap 8
1.8.3	Notice on License Renewal (Reserved).....	Ap 8
<b>1.9</b>	<b><u>Staff Review of License/Permit Application</u> .....</b>	Ap 8
<b>1.10</b>	<b><u>Withdrawal of Application for License/Permit/Transfer</u> .....</b>	Ap 11

1.10.1	Withdrawal Without Prejudice .....	Ap 13
1.10.2	Withdrawal With Prejudice .....	Ap 14
<b>1.11</b>	<b><u>Abandonment of Application for License/Permit</u></b> .....	Ap 15
<b>2.0</b>	<b>PREHEARING MATTERS.....</b>	Pre 1
<b>2.1</b>	<b><u>Scheduling of Hearings</u></b> .....	Pre 1
	(See Section 3.3)	
<b>2.2</b>	<b><u>Necessity of Hearing</u></b> .....	Pre 1
2.2.1	Materials License Hearings.....	Pre 2
2.2.2	Operating License/Amendment Hearings .....	Pre 2
2.2.3	Hearings on Exemptions .....	Pre 3
2.2.4	License Transfer Hearings .....	Pre 3
2.2.5	Hearings on Miscellaneous Matters .....	Pre 4
<b>2.3</b>	<b><u>Location of Hearing</u></b> .....	Pre 5
2.3.1	Public Interest Requirements Affecting Hearing Location.....	Pre 5
	(Reserved)	
2.3.2	Convenience of Litigants Affecting Hearing Location .....	Pre 5
	(See Section 3.3.5.2)	
<b>2.4</b>	<b><u>Issues for Hearing</u></b> .....	Pre 5
	(See Sections 3.4 to 3.4.6)	
<b>2.5</b>	<b><u>Notice of Hearing</u></b> .....	Pre 5
2.5.1	Contents of Notice of Hearing.....	Pre 5
2.5.2	Adequacy of Notice of Hearing .....	Pre 6
2.5.3	Publication of Notice of Hearing in <u>Federal Register</u> .....	Pre 6
2.5.4	Requirement to Renotice .....	Pre 7
<b>2.6</b>	<b><u>Prehearing Conferences</u></b> .....	Pre 8
2.6.1	Transcripts of Prehearing Conferences .....	Pre 8
2.6.2	Prehearing Conference Order.....	Pre 8
2.6.2.1	Effect of Prehearing Conference Order .....	Pre 8
2.6.2.2	Objections to Prehearing Conference Order.....	Pre 8
2.6.2.3	Appeal from Prehearing Conference Order .....	Pre 9
<b>2.7</b>	<b><u>Television Coverage of Prehearing Conferences</u></b> .....	Pre 9
	(See Section 6.32)	
<b>2.8</b>	<b><u>Conference Calls</u></b> .....	Pre 9
<b>2.9</b>	<b><u>Prehearing Motions</u></b> .....	Pre 9
2.9.1	Prehearing Motions Challenging ASLB Composition.....	Pre 9
2.9.1.1	Contents of Motion Challenging ASLB Composition.....	Pre 10
2.9.1.2	Evidence of Bias in Challenges to ASLB Composition .....	Pre 10
2.9.1.3	Waiver of Challenges to ASLB Composition.....	Pre 10
2.9.2	Motions .....	Pre 11

<b>2.10</b>	<b><u>Intervention</u></b> .....	Pre 11
2.10.1	General Policy on Intervention .....	Pre 11
2.10.2	Intervenor's Need for Counsel .....	Pre 12
2.10.3	Petitions to Intervene .....	Pre 13
2.10.3.1	Pleading Requirements .....	Pre 15
2.10.3.2	Defects in Pleadings .....	Pre 17
2.10.3.3	Time Limits/Late Petitions .....	Pre 18
2.10.3.3.1	Time for Filing Intervention Petitions .....	Pre 19
2.10.3.3.1.A	Timeliness of Amendments to Intervention Petitions .....	Pre 20
2.10.3.3.2	Sufficiency of Notice of Time Limits on Intervention .....	Pre 20
2.10.3.3.3	Consideration of Untimely Petitions to Intervene .....	Pre 21
2.10.3.3.3.A	Factor #1—Good Cause for Late Filing .....	Pre 26
2.10.3.3.3.B	Factor #2—Nature of the Requestor's/Petitioner's Right Under the Act to Be Made a Party to the Proceeding .....	Pre 31
2.10.3.3.3.C	Factor #3—Nature and Extent of the Requestor's/Petitioner Property, Financial or Other Interest in the Proceeding .....	Pre 31
2.10.3.3.3.D	Factor #4—Possible Effect of Any Order That May Be Entered in the Proceeding on the Requestor's/Petitioner's Interest .....	Pre 31
2.10.3.3.3.E	Factor #5—Other Means for Protecting Petitioner's Interests .....	Pre 31
2.10.3.3.3.F	Factor #6—Extent Petitioner's Interests will be Represented by Other Parties .....	Pre 32
2.10.3.3.3.G	Factor #7—Extent Participation Will Broaden Issues or Delay the Proceeding .....	Pre 34
2.10.3.3.3.H	Factor #8—Ability of Petitioner to Assist in Developing Record .....	Pre 36
2.10.3.3.4	Appeals from Rulings on Late Intervention .....	Pre 37
2.10.3.3.5	Mootness of Petitions to Intervene .....	Pre 38
2.10.3.4	Amendment of Petition Expanding Scope of Intervention .....	Pre 38
2.10.3.5	Withdrawal of Petition to Intervene .....	Pre 38
2.10.3.6	Intervention in Antitrust Proceedings .....	Pre 40
2.10.4	Interest and Standing for Intervention .....	Pre 41
2.10.4.1	Judicial Standing to Intervene .....	Pre 45
2.10.4.1.1	"Injury-in-Fact" and "Zone of Interest" Tests for Standing to Intervene .....	Pre 49
2.10.4.1.1.1	"Injury-in-Fact" Test .....	Pre 49
2.10.4.1.1.1.A	Future/Hypothetical/Academic Injury .....	Pre 54
2.10.4.1.1.1.B	Economic/Competitive Injury .....	Pre 55
2.10.4.1.1.1.C	Health and Safety/Environmental Injury .....	Pre 56
2.10.4.1.1.1.D	Injury to Legal and/or Constitutional Rights .....	Pre 57
2.10.4.1.1.1.E	Injury Due to Proximity to a Facility .....	Pre 58
2.10.4.1.1.1.F	Injury Due to Failure to Prepare an EIS .....	Pre 67
2.10.4.1.1.1.G	Injury Due to Property Interest .....	Pre 68
2.10.4.1.1.2	"Zone of Interests" Test .....	Pre 68
2.10.4.1.2	Standing of Organizations to Intervene .....	Pre 71
2.10.4.1.2.1	Organizational Standing .....	Pre 73
2.10.4.1.2.2	Representational Standing .....	Pre 75
2.10.4.1.2.2.A	The Person an Organization Seeks to Represent Must Be a "Member" and Must Have Given "Authorization" .....	Pre 77
2.10.4.1.2.2.B	Timing of Membership .....	Pre 79
2.10.4.1.2.3	Governments/Indian Tribes and Organizational Standing .....	Pre 79

2.10.4.1.3	Standing to Intervene in Export Licensing Cases .....	Pre 81
2.10.4.1.4	Standing to Intervene in License Transfer Proceedings .....	Pre 82
2.10.4.2	Discretionary Intervention .....	Pre 84
2.10.5	Contentions of Intervenors .....	Pre 87
2.10.5.1	Scope of Contentions.....	Pre 89
2.10.5.2	Pleading Requirements for Contentions .....	Pre 91
2.10.5.2.1	Bases for Contentions.....	Pre 94
2.10.5.2.2	Specificity of Contentions.....	Pre 101
2.10.5.3	Response to Contentions.....	Pre 103
2.10.5.3.1	Reply Briefs.....	Pre 104
2.10.5.4	Material Used in Support of Contentions .....	Pre 104
2.10.5.5	Timeliness of Submission of Contentions .....	Pre 106
2.10.5.5.1	Factor #1—Good Cause for Late Filing .....	Pre 110
2.10.5.5.2	Factor #2—Nature of the Requestor's/Petitioner's Right Under the Act to Be Made a Party to the Proceeding .....	Pre 116
2.10.5.5.3	Factor #3—Nature and Extent of the Requestor's/Petitioner Property, Financial or Other Interest in the Proceeding .....	Pre 116
2.10.5.5.4	Factor #4—Possible Effect of Any Order That May Be Entered in the Proceeding on the Requestor's/Petitioner's Interest.....	Pre 116
2.10.5.5.5	Factor #5—Other Means Available to Protect the Petitioner's Interest.....	Pre 116
2.10.5.5.6	Factor #6—Extent Petitioner's Interests are Represented By Existing Parties .....	Pre 117
2.10.5.5.7	Factor #7—Extent Participation Will Broaden Issues or Delay the Proceeding .....	Pre 118
2.10.5.5.8	Factor #8—Ability of Petitioner to Assist in Developing Record ...	Pre 119
2.10.5.6	Contentions Challenging Regulations.....	Pre 121
2.10.5.7	Contentions Involving Generic Issues/Subject of Rulemaking....	Pre 123
2.10.5.8	Contentions Challenging Absent or Incomplete Documents.....	Pre 125
2.10.5.9	Contentions re Adequacy of Security Plan .....	Pre 128
2.10.5.10	Defective Contentions .....	Pre 129
2.10.5.11	Discovery to Frame Contentions.....	Pre 131
2.10.5.12	Stipulations on Contentions (Reserved) .....	Pre 131
2.10.6	Conditions on Grants of Intervention .....	Pre 131
2.10.7	Reinstatement of Intervenor After Withdrawal .....	Pre 131
2.10.8	Rights of Intervenors at Hearing .....	Pre 131
2.10.8.1	Burden of Proof.....	Pre 133
2.10.8.2	Presentation of Evidence .....	Pre 134
2.10.8.2.1	Affirmative Presentation by Intervenor/Participants .....	Pre 134
2.10.8.2.2	Consolidation of Intervenor Presentations .....	Pre 134
2.10.8.3	Cross-Examination by Intervenors .....	Pre 135
2.10.8.4	Intervenor's Right to File Proposed Findings .....	Pre 135
2.10.8.5	Attendance at/Participation in Prehearing Conferences/Hearings .....	Pre 135
2.10.8.6	Pleadings and Documents of Intervenors .....	Pre 137
2.10.9	Cost of Intervention .....	Pre 137
2.10.9.1	Financial Assistance to Intervenors .....	Pre 137
2.10.9.2	Intervenors' Witnesses.....	Pre 138
2.10.10	Appeals by Intervenors .....	Pre 138
2.10.11	Intervention in Remanded Proceedings.....	Pre 138

<b>2.11</b>	<b><u>Nonparty Participation - Limited Appearance and Interested States</u></b> .....	Pre 139
2.11.1	Limited Appearances in NRC Adjudicatory Proceedings .....	Pre 139
2.11.1.1	Requirements for Limited Appearance .....	Pre 139
2.11.1.2	Scope/Limitations of Limited Appearances .....	Pre 139
2.11.2	Participation by Nonparty Interested States and Local Governments .....	Pre 140
<b>2.12</b>	<b><u>Discovery</u></b> .....	Pre 143
2.12.1	Time for Discovery .....	Pre 143
2.12.2	Discovery Rules .....	Pre 146
2.12.2.1	Construction of Discovery Rules .....	Pre 147
2.12.2.2	Scope of Discovery .....	Pre 148
2.12.2.3	Requests for Discovery During Hearing .....	Pre 151
2.12.2.4	Privileged Matter .....	Pre 151
2.12.2.4.1	Attorney-Client Privilege .....	Pre 153
2.12.2.4.2	Identity of Confidential Informants .....	Pre 156
2.12.2.4.3	FOIA Exemptions—Executive/Deliberative Process Privilege .....	Pre 158
2.12.2.4.4	FOIA Exemptions—Personal Privacy Information .....	Pre 162
2.12.2.4.5	FOIA Exemptions—Proprietary Information .....	Pre 163
2.12.2.4.6	Waiver of a Privilege .....	Pre 163
2.12.2.5	Access to Classified, Safeguards, or Other Security-Related Information .....	Pre 164
2.12.2.6	Protective Orders .....	Pre 164
2.12.2.7	Work Product .....	Pre 166
2.12.2.8	Updating Discovery Responses .....	Pre 167
2.12.2.9	Interrogatories .....	Pre 167
2.12.3	Discovery Against the Staff .....	Pre 168
2.12.4	Responses to Discovery Requests .....	Pre 170
2.12.5	Compelling Discovery/Subpoenas .....	Pre 171
2.12.5.1	Compelling Discovery From ACRS and ACRS Consultants .....	Pre 174
2.12.5.2	Sanctions for Failure to Comply with Discovery Orders .....	Pre 174
2.12.6	Appeals of Discovery Rulings .....	Pre 177
2.12.7	Discovery in High-Level Waste Licensing Proceedings .....	Pre 178
2.12.7.1	Pre-License Application Licensing Board .....	Pre 178
2.12.7.2	Licensing Support Network (Formerly Licensing Support System) .....	Pre 178
<b>3.0</b>	<b><u>HEARINGS</u></b> .....	H 1
<b>3.1</b>	<b><u>Licensing Board</u></b> .....	H 1
3.1.1	General Role/Power of Licensing Board .....	H 1
3.1.1.1	Role and Authority of the Chief Judge .....	H 3
3.1.2	Scope of Jurisdiction of Licensing Board .....	H 4
3.1.2.1	Jurisdiction Grant from the Commission .....	H 4
3.1.2.1.1	Effect of Commission Decisions/Precedent .....	H 6
3.1.2.2	Authority in Construction Permit Proceedings Distinguished From Authority in Operating License Proceedings .....	H 8
3.1.2.2.A	Scope of Authority in Construction Permit Proceedings .....	H 8
3.1.2.2.B	Scope of Authority in Operating License Proceedings .....	H 10

3.1.2.3	Scope of Authority in Uncontested Proceedings (“Mandatory Hearings”) .....	H 12
3.1.2.4	Scope of Authority in License Amendment Proceedings .....	H 13
3.1.2.5	Scope of Authority to Rule on Petitions and Motions .....	H 14
3.1.2.6	Scope of Authority to Reopen the Record .....	H 16
3.1.2.7	Scope of Authority to Rule on Contentions .....	H 17
3.1.2.8	Authority of Licensing Board to Raise Sua Sponte Issues.....	H 18
3.1.2.9	Expedited Proceedings; Timing of Rulings .....	H 21
3.1.2.10	Licensing Board's Relationship with the NRC Staff .....	H 23
3.1.2.11	Licensing Board's Relationship with States and Other Agencies (Including CEQ).....	H 28
3.1.2.12	Conduct of Hearing by Licensing Board .....	H 30
3.1.2.12.1	Powers/Role of Presiding Officer .....	H 33
3.1.3	Quorum Requirements for Licensing Board Hearing .....	H 34
3.1.4	Disqualification of a Licensing Board Member.....	H 34
3.1.4.1	Motion to Disqualify Adjudicatory Board Member .....	H 34
3.1.4.2	Grounds for Disqualification of Adjudicatory Board Member .....	H 36
3.1.4.3	Improperly Influencing an Adjudicatory Board Decision .....	H 39
3.1.5	Resignation of a Licensing Board Member .....	H 39
<b>3.2</b>	<b><u>Export Licensing Hearings</u></b> .....	<b>H 40</b>
3.2.1	Scope of Export Licensing Hearings.....	H 40
3.2.2	Standing to Intervene in Export License Hearings.....	H 40
3.2.3	Hearing Requests .....	H 40
<b>3.3</b>	<b><u>Hearing Scheduling Matters</u></b> .....	<b>H 41</b>
3.3.1	Scheduling of Hearings .....	H 41
3.3.1.1	Public Interest Requirements re Hearing Schedule .....	H 43
3.3.1.2	Convenience of Litigants re Hearing Schedule.....	H 43
3.3.1.3	Adjourned Hearings (Reserved) .....	H 43
3.3.2	Postponement of Hearings .....	H 44
3.3.2.1	Factors Considered in Hearing Postponement .....	H 44
3.3.2.2	Effect of Plant Deferral on Hearing Postponement .....	H 45
3.3.2.3	Sudden Absence of ASLB Member at Hearing.....	H 45
3.3.2.4	Time Extensions for Case Preparation Before Hearing .....	H 46
3.3.3	Scheduling Disagreements Among Parties .....	H 46
3.3.4	Appeals of Hearing Date Rulings .....	H 47
3.3.5	Location of Hearing (Reserved) .....	H 47
3.3.5.1	Public Interest Requirements re Hearing Location (Reserved).....	H 47
3.3.5.2	Convenience of Litigants Affecting Hearing Location .....	H 47
3.3.6	Consolidation of Hearings and of Parties.....	H 48
3.3.7	In Camera Hearings .....	H 49
<b>3.4</b>	<b><u>Issues for Hearing</u></b> .....	<b>H 49</b>
3.4.1	Intervenor's Contentions - Admissibility at Hearing.....	H 53
3.4.2	Issues Not Raised by Parties (Also see 3.1.2.7).....	H 55
3.4.3	Issues Not Addressed by a Party.....	H 56
3.4.4	Separate Hearings on Special Issues.....	H 57
3.4.5	Construction Permit Extension Proceedings.....	H 58

3.4.5.1	Scope of Construction Permit Extension Proceedings .....	H 59
3.4.5.2	Contentions in Construction Permit Extension Proceedings.....	H 60
3.4.6	Motion to Strike .....	H 61
3.4.7	Result of Withdrawal of a Party.....	H 61
<b>3.5</b>	<b><u>Summary Disposition</u></b> .....	H 62
	(Also see Section 5.8.4)	
3.5.1	Applicability of Federal Rules Governing Summary Judgment... H 62	
3.5.2	Standard for Granting/Denying a Motion for Summary Disposition .....	H 62
3.5.3	Burden of Proof With Regard to Summary Disposition Motions . H 66	
3.5.4	Contents of Motions for/Responses to Summary Disposition..... H 70	
3.5.5	Time for Filing Motions for Summary Disposition .....	H 73
3.5.6	Time for Filing Responses to Summary Disposition Motions..... H 74	
3.5.7	Role/Power of Licensing Board in Ruling on Summary Disposition Motions .....	H 74
3.5.7.1	Operating License Hearings .....	H 76
3.5.7.2	Construction Permit Hearings .....	H 77
3.5.7.3	Amendments to Existing Licenses .....	H 77
3.5.8	Summary Disposition: Mootness .....	H 77
3.5.9	Content of Summary Disposition Orders .....	H 78
3.5.10	Appeals from Rulings on Summary Disposition..... H 78	
<b>3.6</b>	<b><u>Other Dispositive Motions/Failure to State a Claim</u></b> .....	H 79
<b>3.7</b>	<b><u>Attendance at and Participation in Hearings</u></b> .....	H 79
<b>3.8</b>	<b><u>Burden and Means of Proof</u></b> .....	H 80
3.8.1	Duties of Applicant/Licensee.....	H 82
3.8.2	Intervenor's Contentions - Burden and Means of Proof .....	H 83
3.8.3	Specific Issues - Means of Proof .....	H 84
3.8.3.1	Exclusion Area Controls.....	H 84
3.8.3.2	Need for Facility .....	H 85
3.8.3.3	Burden and Means of Proof in Interim Licensing Suspension Cases.....	H 86
3.8.3.4	Availability of Uranium Supply .....	H 87
3.8.3.5	Environmental Costs (Reserved) .....	H 87
3.8.3.5.1	Cost of Withdrawing Farmland from Production .....	H 87
	(Also see Section 6.16.6.1.1)	
3.8.3.6	Alternate Sites Under NEPA.....	H 87
3.8.3.7	Management Capability .....	H 87
<b>3.9</b>	<b><u>Burden of Persuasion (Degree of Proof)</u></b> .....	H 89
3.9.1	Environmental Effects Under NEPA .....	H 89
<b>3.10</b>	<b><u>Stipulations</u></b> .....	H 89
<b>3.11</b>	<b><u>Official Notice of Facts</u></b> .....	H 90
<b>3.12</b>	<b><u>Evidence</u></b> .....	H 92
3.12.1	Rules of Evidence .....	H 93

3.12.1.1	Admissibility of Evidence .....	H 93
3.12.1.1.1	Admissibility of Hearsay Evidence .....	H 94
3.12.1.2	Hypothetical Questions .....	H 95
3.12.1.3	Reliance On Scientific Treatises, Newspapers, Periodicals .....	H 95
3.12.1.4	Off-the-Record Comments .....	H 95
3.12.1.5	Presumptions and Inferences .....	H 95
3.12.1.6	Government Documents .....	H 96
3.12.2	Status of ACRS Letters.....	H 96
3.12.3	Presentation of Evidence by Intervenors .....	H 97
3.12.4	Evidentiary Objections .....	H 97
3.12.5	Statutory Construction; Weight .....	H 98
3.12.5.1	Due Process .....	H 99
3.12.5.2	Bias or Prejudgment, Disqualification .....	H 99
<b>3.13</b>	<b><u>Witnesses at Hearing</u></b> .....	H 99
3.13.1	Compelling Appearance of Witness.....	H 100
3.13.1.1	NRC Staff as Witnesses .....	H 100
3.13.1.2	ACRS Members as Witnesses.....	H 101
3.13.2	Sequestration of Witnesses .....	H 101
3.13.3	Board Witnesses.....	H 102
3.13.4	Expert Witnesses .....	H 102
3.13.4.1	Fees for Expert Witnesses.....	H 105
<b>3.14</b>	<b><u>Cross-Examination</u></b> .....	H 105
3.14.1	Cross-Examination by Intervenors .....	H 106
3.14.2	Cross-Examination by Experts.....	H 108
3.14.3	Inability to Cross-Examine as Grounds to Reopen .....	H 109
<b>3.15</b>	<b><u>Record of Hearing</u></b> .....	H 109
3.15.1	Supplementing Hearing Record by Affidavits .....	H 109
3.15.2	Reopening Hearing Record .....	H 109
3.15.3	Material Not Contained in Hearing Record .....	H 111
<b>3.16</b>	<b><u>Interlocutory Review via Directed Certification</u></b> .....	H 112
<b>3.17</b>	<b><u>Licensing Board Findings</u></b> .....	H 112
3.17.1	Independent Calculations by Licensing Board .....	H 115
<b>3.18</b>	<b><u>Res Judicata and Collateral Estoppel</u></b> .....	H 115
<b>3.19</b>	<b><u>Termination of Proceedings</u></b> .....	H 122
3.19.1	Procedures for Termination .....	H 122
3.19.2	Post-Termination Authority of Commission.....	H 123
3.19.3	Dismissal.....	H 124
<b>3.20</b>	<b><u>Uncontested Proceedings (Mandatory Hearings)</u></b> .....	H 124
<b>4.0</b>	<b><u>POST HEARING MATTERS</u></b> .....	<b>PH 1</b>
<b>4.1</b>	<b><u>Settlements and Stipulations</u></b> .....	<b>PH 1</b>

<b>4.2</b>	<b><u>Proposed Findings</u></b> .....	<b>PH 5</b>
4.2.1	Intervenor's Right to File Proposed Findings .....	PH 6
4.2.2	Failure to File Proposed Findings .....	PH 7
<b>4.3</b>	<b><u>Initial Decisions</u></b> .....	<b>PH 8</b>
4.3.1	Reconsideration of Initial Decision .....	PH 10
<b>4.4</b>	<b><u>Reopening Hearings</u></b> .....	<b>PH 11</b>
4.4.1	Motions to Reopen Hearing .....	PH 14
4.4.1.1	Time for Filing Motion to Reopen Hearing .....	PH 17
4.4.1.2	Contents of Motion to Reopen Hearing (Reserved) .....	PH 19
4.4.2	Grounds for Reopening Hearing .....	PH 20
4.4.3	Reopening Construction Permit Hearings to Address New Generic Issues .....	PH 25
4.4.4	Discovery to Obtain Information to Support Reopening of Hearing is Not Permitted .....	PH 25
<b>4.5</b>	<b><u>Motions to Reconsider</u></b> .....	<b>PH 26</b>
<b>4.6</b>	<b><u>Procedure on Remand</u></b> .....	<b>PH 29</b>
4.6.1	Jurisdiction of the Licensing Board on Remand .....	PH 29
4.6.2	Jurisdiction of the Board on Remand .....	PH 30
4.6.3	Stays Pending Remand to Licensing Board .....	PH 30
4.6.4	Participation of Parties in Remand Proceedings .....	PH 31
<b>5.0</b>	<b><u>APPEALS</u></b> .....	App 1
<b>5.1</b>	<b><u>Commission Review</u></b> .....	App 1
5.1.1	Commission Review Pursuant to 2.341(b) (formerly 2.786(b)) .....	App 1
5.1.2	<u>Sua Sponte</u> Review .....	App 2
5.1.3	Effect of Commission's Denial of Petition for Review .....	App 3
5.1.4	Commission Review Pursuant to 2.311 (formerly 2.714a) .....	App 4
5.1.5	Effect of Affirmance as Precedent .....	App 6
5.1.6	Precedential Effect of Unpublished Opinions .....	App 7
5.1.7	Precedential Weight Accorded Previous Appeal Board Decisions .....	App 7
<b>5.2</b>	<b><u>Who Can Appeal</u></b> .....	App 7
5.2.1	Participating by filing an Amicus Curiae Brief .....	App 9
5.2.2	Aggrieved Parties Can Appeal .....	App 10
5.2.3	Parties' Opportunity to be Heard on Appeal .....	App 11
<b>5.3</b>	<b><u>How to Petition for Review</u></b> .....	App 11
<b>5.4</b>	<b><u>Time for Seeking Review</u></b> .....	App 12
5.4.1	Variation in Time Limits of Appeals .....	App 16
<b>5.5</b>	<b><u>Scope of Commission Review</u></b> .....	App 16
5.5.1	Issues Raised for the First Time on Appeal or in a Petition for Review .....	App 18

5.5.2	Effect on Appeal of Failure to File Proposed Findings .....	App 20
5.5.3	Matters Considered on Appeal of Ruling Allowing Late Intervention .....	App 20
5.5.4	Consolidation of Appeals on Generic Issues .....	App 20
<b>5.6</b>	<b><u>Standards for Reversing Licensing Board on Findings of Fact and Other Matters</u></b> .....	App 20
5.6.1	Standards for Reversal of Ruling on Intervention .....	App 24
<b>5.7</b>	<b><u>Stays</u></b> .....	App 26
5.7.1	Requirements for a Stay Pending Review .....	App 28
5.7.1.1	Stays of Initial Decisions .....	App 28
5.7.1.2	Stays of Board Proceedings, Interlocutory Rulings & Staff Action.....	App 29
5.7.1.3	10 C.F.R. § 2.342 (formerly § 2.788) & Virginia Petroleum Jobbers Criteria.....	App 31
5.7.1.3.1	Irreparable Injury.....	App 33
5.7.1.3.2	Possibility of Success on Merits.....	App 36
5.7.1.3.3	Harm to Other Parties and Where the Public Interest Lies .....	App 37
5.7.2	Stays Pending Remand to Licensing Board .....	App 38
5.7.3	Stays Pending Judicial Review .....	App 38
5.7.4	Stays Pending Remand After Judicial Review .....	App 39
5.7.5	Immediate Effectiveness Review of Operating License Decisions .....	App 39
<b>5.8</b>	<b><u>Review as to Specific Matters</u></b> .....	App 40
5.8.1	Scheduling Orders .....	App 40
5.8.2	Discovery Rulings .....	App 41
5.8.2.1	Rulings on Discovery Against Nonparties .....	App 41
5.8.2.2	Rulings Curtailing Discovery .....	App 41
5.8.3	Refusal to Compel Joinder of Parties .....	App 42
5.8.3.1	Order Consolidating Parties .....	App 42
5.8.4	Order Denying Summary Disposition .....	App 42
	(Also see Section 3.5)	
5.8.5	Procedural Irregularities .....	App 42
5.8.6	Matters of Recurring Importance .....	App 42
5.8.7	Advisory Decisions on Trial Rulings.....	App 43
5.8.8	Order on Pre-LWA Activities .....	App 43
5.8.9	Partial Initial Decisions .....	App 43
5.8.10	Other Licensing Actions .....	App 44
5.8.11	Evidentiary Rulings .....	App 44
5.8.12	Authorization of Construction Permit .....	App 44
5.8.13	Certification of Gaseous Diffusion Plants.....	App 45
<b>5.9</b>	<b><u>Perfecting Appeals</u></b> .....	App 45
5.9.1	General Requirements for Petition for Review of an Initial Decision.....	App 45
<b>5.10</b>	<b><u>Briefs on Appeal</u></b> .....	App 45
5.10.1	Importance of Brief.....	App 45
5.10.2	Time for Submittal of Brief .....	App 46

5.10.2.1	Time Extensions for Brief.....	App 47
5.10.2.2	Supplementary or Reply Briefs .....	App 48
5.10.3	Contents of Brief .....	App 48
5.10.3.1	Opposing Briefs .....	App 52
5.10.3.2	Amicus Curiae Briefs .....	App 52
<b>5.11</b>	<b>Oral Argument</b> .....	App 52
5.11.1	Failure to Appear for Oral Argument.....	App 53
5.11.2	Grounds for Postponement of Oral Argument .....	App 53
5.11.3	Oral Argument by Nonparties .....	App 53
<b>5.12</b>	<b>Interlocutory Review</b> .....	App 54
5.12.1	Interlocutory Review Disfavored .....	App 54
5.12.2	Criteria for Interlocutory Review.....	App 56
5.12.2.1	Irreparable Harm .....	App 60
5.12.2.2	Pervasive and Unusual Effect on the Proceeding.....	App 62
5.12.3	Responses Opposing Interlocutory Review .....	App 65
5.12.4	Certification of Questions for Interlocutory Review and Referred Rulings .....	App 65
5.12.4.1	Effect of Subsequent Developments on Motion to Certify .....	App 67
5.12.4.2	Effect of Directed Certification on Uncertified Issues .....	App 68
5.12.4.3	Certification of Questions Relating to Restricted Data or National Security Information.....	App 68
<b>5.13</b>	<b>Disqualification of a Commissioner</b> .....	App 68
<b>5.14</b>	<b>Reconsideration by the Commission</b> .....	App 69
	(Also see Section 4.5)	
<b>5.15</b>	<b>Jurisdiction of NRC to Consider Matters While Judicial Review is Pending</b> .....	App 71
<b>5.16</b>	<b>Procedure On Remand</b> .....	App 72
	(Also see Section 4.6)	
<b>5.17</b>	<b>Mootness and Vacatur</b> .....	App 72
<b>6.0</b>	<b>GENERAL MATTERS</b> .....	GM 1
<b>6.1</b>	<b>Amendments to Existing Licenses and/or Construction</b>	
	<b>Permits</b> .....	GM 1
6.1.1	Staff Review of Proposed Amendments (Reserved) .....	GM 2
6.1.2	Amendments to Research Reactor Licenses (Reserved).....	GM 2
6.1.3	Matters to be Considered in License Amendment Proceedings .....	GM 2
6.1.3.1	Specific Matters Considered in License Amendment Proceedings .....	GM 2
6.1.4	Hearing Requirements for License/Permit Amendments.....	GM 3
6.1.4.1	Notice of Hearing on License/Permit Amendments (Reserved) .....	GM 6
6.1.4.2	Intervention on License/Permit Amendments .....	GM 6

6.1.4.3	Summary Disposition Procedures on License/Permit Amendments .....	GM 6
6.1.4.4	Matters Considered in Hearings on License Amendments .....	GM 6
6.1.5	Primary Jurisdiction to Consider License Amendment in Special Hearing .....	GM 8
6.1.6	Facility Changes Without License Amendments .....	GM 9
<b>6.2</b>	<b><u>Amendments to Construction Permit Applications</u></b> .....	GM 9
<b>6.3</b>	<b><u>Antitrust Considerations</u></b> .....	GM 10
6.3.A	Application of Antitrust Laws; Market Power .....	GM 12
6.3.B	Application of Antitrust Laws; Remedial Authority .....	GM 13
6.3.1	Consideration of Antitrust Matters After the Construction Permit Stage .....	GM 14
6.3.1.1	Limitations on Antitrust Review After Issuance of Operating License .....	GM 16
6.3.2	Intervention in Antitrust Proceedings .....	GM 17
6.3.3	Discovery in Antitrust Proceedings .....	GM 18
6.3.3.1	Discovery Cutoff Dates for Antitrust Proceedings .....	GM 19
<b>6.4</b>	<b><u>Attorney Conduct</u></b> .....	GM 19
6.4.1	Practice Before Commission .....	GM 19
6.4.2	Disciplinary Matters re Attorneys .....	GM 21
6.4.2.1	Jurisdiction of Special Board re Attorney Discipline .....	GM 22
6.4.2.2	Procedures in Special Disqualification Hearings re: Attorney Conduct .....	GM 22
6.4.2.3	Conflict of Interest .....	GM 23
<b>6.5</b>	<b><u>Communications Between Staff/Applicant/Other Parties/ Adjudicatory Bodies</u></b> .....	GM 23
6.5.1	Ex Parte Communications Rule .....	GM 24
6.5.2	"Separation of Functions" Rules .....	GM 25
6.5.3	Telephone Conference Calls .....	GM 25
6.5.4	Staff-Applicant Communications .....	GM 26
6.5.4.1	Staff Review of Application .....	GM 26
6.5.4.2	Staff-Applicant Correspondence .....	GM 27
6.5.5	Notice of Relevant Significant Developments .....	GM 27
6.5.5.1	Duty to Inform Adjudicatory Board of Significant Developments .....	GM 27
<b>6.6</b>	<b><u>Decommissioning</u></b> .....	GM 30
6.6.1	Decommissioning Plan .....	GM 30
6.6.1.1	Decommissioning Funding .....	GM 31
<b>6.7</b>	<b><u>Early Site Review Procedures</u></b> .....	GM 33
6.7.1	Scope of Early Site Review .....	GM 34
<b>6.8</b>	<b><u>Endangered Species Act</u></b> .....	GM 34
6.8.1	Required Findings re Endangered Species Act .....	GM 34
6.8.2	Degree of Proof Needed re Endangered Species Act .....	GM 34

<b>6.9</b>	<b><u>Financial Qualifications</u></b> .....	GM 35
<b>6.10</b>	<b><u>Generic Issues</u></b> .....	GM 41
6.10.1	Consideration of Generic Issues in Licensing Proceedings .....	GM 41
6.10.2	Effect of Unresolved Generic Issues.....	GM 42
6.10.2.1	Effect of Unresolved Generic Issues in Construction Permit Proceedings.....	GM 42
6.10.2.2	Effect of Unresolved Generic Issues in Operating License Proceedings.....	GM 43
<b>6.11</b>	<b><u>Power Reactor License Renewal Proceeding</u></b> .....	GM 43
<b>6.12</b>	<b><u>Masters in NRC Proceedings</u></b> .....	GM 48
<b>6.13</b>	<b><u>[RESERVED]</u></b> .....	GM 48
<b>6.14</b>	<b><u>Materials Licenses</u></b> .....	GM 48
6.14.1	Written Presentations in Materials Proceedings .....	GM 50
6.14.2	Stays of Material Licensing Proceedings .....	GM 51
6.14.3	Scope of Materials Proceedings/Authority of Presiding Officer .....	GM 52
6.14.4	Amendments to Material Licenses.....	GM 53
6.14.5	Materials License - Renewal.....	GM 53
6.14.6	Termination of Material License.....	GM 54
<b>6.15</b>	<b><u>Motions in NRC Proceedings</u></b> .....	GM 54
6.15.1	Form of Motion.....	GM 55
6.15.1.1	Consultation Requirement (2.323(b)).....	GM 55
6.15.2	Responses to Motions .....	GM 56
6.15.2.1	Time for Filing Responses to Motions.....	GM 56
6.15.3	Licensing Board Actions on Motions.....	GM 56
<b>6.16</b>	<b><u>NEPA Considerations</u></b> .....	GM 57
6.16.1	Environmental Impact Statements (EIS).....	GM 61
6.16.1.1	Need to Prepare an EIS .....	GM 63
6.16.1.2	Scope of EIS .....	GM 70
6.16.2	Role of EIS .....	GM 73
6.16.3	Circumstances Requiring Redrafting of Final Environmental Statement (FES) .....	GM 74
6.16.3.1	Effect of Failure to Comment on Draft Environmental Statement (DES) .....	GM 76
6.16.3.2	Stays Pending Demand for Inadequate EIS .....	GM 76
6.16.4	Alternatives .....	GM 77
6.16.4.1	Obviously Superior Standard for Site Selection.....	GM 80
6.16.4.2	Standards for Conducting Cost-Benefit Analysis Related to Alternatives.....	GM 81
6.16.5	Need for Facility .....	GM 82
6.16.6	Cost-Benefit Analysis Under NEPA .....	GM 83
6.16.6.1	Consideration of Specific Costs Under NEPA .....	GM 86
6.16.6.1.1	Cost of Withdrawing Farmland from Production .....	GM 86

	(Also see Section 3.8.3.5.1)	
6.16.6.1.2	Socioeconomic Costs as Affected by Increased Employment and Taxes from Proposed Facility .....	GM 86
6.16.7	Consideration of Class 9 Accidents/"Remote and Speculative" Accidents in an Environmental Impact Statement.....	GM 87
6.16.8	Power of NRC Under NEPA .....	GM 89
6.16.8.1	Powers in General .....	GM 90
6.16.8.2	Transmission Line Routing .....	GM 91
6.16.8.3	Pre-LWA Activities/Offsite Activities.....	GM 91
6.16.8.4	Relationship to EPA with Regard to Cooling Systems.....	GM 92
6.16.8.5	NRC Power Under NEPA re the Federal Water Pollution Control Act .....	GM 92
6.16.8.6	Environmental Justice.....	GM 93
6.16.8.7	Relationship of NRC Environmental Reviews to State Law .....	GM 94
6.16.9	Spent Fuel Pool Proceedings .....	GM 94
6.16.10	Certificate of Compliance/Gaseous Diffusion Plant .....	GM 96
6.16.11	Waste Confidence Rule (NEPA) .....	GM 96
<b>6.17</b>	<b><u>NRC Staff</u></b> .....	GM 96
6.17.1	Staff Role in Licensing Proceedings .....	GM 96
6.17.1.1	Staff Demands on Applicant or Licensee .....	GM 100
6.17.1.2	Staff Witnesses .....	GM 101
6.17.1.3	Post Hearing Resolution of Outstanding Matters by the Staff.....	GM 102
6.17.2	Status of Staff Regulatory Guides (Also see Section 6.21.3) .....	GM 104
6.17.3	Status of Staff Position and Working Papers .....	GM 104
6.17.4	Status of Standard Review Plan .....	GM 105
6.17.5	Conduct of NRC Employees (Reserved) .....	GM 105
<b>6.18</b>	<b><u>Orders of Licensing Boards and Presiding Officers</u></b> .....	GM 105
6.18.1	Compliance with Board Orders .....	GM 105
<b>6.19</b>	<b><u>Precedent and Adherence to Past Agency Practice</u></b> .....	GM 106
<b>6.20</b>	<b><u>Pre-Construction Permit Activities</u></b> .....	GM 107
6.20.1	Pre-LWA Activity .....	GM 109
6.20.2	Limited Work Authorization .....	GM 109
6.20.2.1	LWA Status Pending Remand Proceedings .....	GM 110
<b>6.21</b>	<b><u>Regulations</u></b> .....	GM 110
6.21.1	Compliance with Regulations.....	GM 110
6.21.2	Commission Policy Statements .....	GM 110
6.21.3	Regulatory Guides and Other Guidance Documents.....	GM 111
6.21.4	Challenges to Regulations .....	GM 114
6.21.5	Agency's Interpretation of its Own Regulations .....	GM 117
6.21.6	General Design Criteria .....	GM 119
6.21.7	Reporting Requirements .....	GM 120
<b>6.22</b>	<b><u>Rulemaking</u></b> .....	GM 121
6.22.1	Rulemaking Distinguished from General Policy Statements .....	GM 122

6.22.2	Generic Issues and Rulemaking .....	GM 122
<b>6.23</b>	<b><u>Research Reactors</u></b> .....	GM 122
<b>6.24</b>	<b><u>Disclosure of Information to the Public</u></b> .....	GM 123
6.24.1	Freedom of Information Act Disclosure.....	GM 124
6.24.2	Privacy Act Disclosure (Reserved) .....	GM 125
6.24.3	Disclosure of Proprietary Information.....	GM 126
6.24.3.1	Protecting Information Where Disclosure is Sought in an Adjudicatory Proceeding .....	GM 127
6.24.3.2	Security Plan Information Under 10 CFR § 2.390(d) .....	GM 130
<b>6.25</b>	<b><u>Enforcement Proceedings</u></b> .....	GM 131
6.25.1	NRC Enforcement Authority.....	GM 131
6.25.2	Enforcement Procedures .....	GM 132
6.25.2.1	Due Process .....	GM 134
6.25.2.2	Intervention .....	GM 134
6.25.3	Petitions for Enforcement Action Under 10 CFR 2.206 .....	GM 137
6.25.3.1	Commission Review of Director's Decisions Under 10 CFR 2.206.....	GM 141
6.25.4	Grounds for Enforcement Orders.....	GM 142
6.25.5	Immediately Effective Orders .....	GM 145
6.25.5.1	Review of Immediate Effectiveness of Enforcement Order .....	GM 149
6.25.6	Issues in Enforcement Proceedings .....	GM 150
6.25.7	Burden of Proof.....	GM 151
6.25.8	Licensing Board Review of Proposed Sanctions .....	GM 152
6.25.9	Stay of Enforcement Proceedings .....	GM 153
6.25.10	Civil Penalty Proceedings .....	GM 154
6.25.11	Settlement of Enforcement Proceedings .....	GM 157
6.25.12	Inspections and Investigations.....	GM 157
6.25.13	False Statements .....	GM 158
6.25.14	Independence of Inspector General.....	GM 158
6.25.15	Whistleblower Protection .....	GM 159
<b>6.26</b>	<b><u>Stay of Agency Licensing Action - Informal Hearings</u></b> .....	GM 160
<b>6.27</b>	<b><u>[Reserved]</u></b> .....	GM 161
<b>6.28</b>	<b><u>Technical Specifications</u></b> .....	GM 161
<b>6.29</b>	<b><u>Termination of Facility Licenses</u></b> .....	GM 162
<b>6.30</b>	<b><u>Procedures in Other Types of Hearings</u></b> .....	GM 164
6.30.1	Military or Foreign Affairs Functions .....	GM 164
6.30.2	Export Licensing .....	GM 164
	(Also see Section 3.4.6)	
6.30.2.1	Jurisdiction of Commission re Export Licensing .....	GM 165
6.30.2.2	Export License Criteria.....	GM 166
6.30.2.3	HEU Export License—Atomic Energy Act .....	GM 167
6.30.3	High-Level Repository Waste Licensing .....	GM 167
6.30.4	Low-Level Waste Disposal.....	GM 168

6.30.5	[Reserved].....	GM 168
6.30.6	Certification of Gaseous Diffusion Plants.....	GM 168
6.30.7	Senior Operator License Proceedings .....	GM 169
6.30.8	Subpart K Proceedings .....	GM 170
<b>6.31</b>	<b><u>Transfers of Licenses (Directly and Indirectly)</u></b> .....	GM 170
6.31.1	Subpart M Proceedings .....	GM 171
6.31.2	Standing in License Transfer Proceedings .....	GM 173
6.31.3	Scope of License Transfer Proceedings .....	GM 176
6.31.3.1	Consideration of Financial Qualifications.....	GM 179
6.31.3.2	Antitrust Considerations.....	GM 181
6.31.3.3	Need for EIS Preparation.....	GM 181
6.31.3.4	Concurrent Proceedings .....	GM 182
6.31.3.5	Decommissioning.....	GM 182
6.31.4	Motions for Stay/Suspension of Proceedings .....	GM 184
<b>6.32</b>	<b><u>Television and Still Camera Coverage of NRC Proceedings</u></b> .....	GM 185
<b>6.33</b>	<b><u>National Historic Preservation Act Requirements</u></b> .....	GM 186
<b>6.34</b>	<b><u>Cultural Resources Plan</u></b> .....	GM 186
<b>6.35</b>	<b><u>Native American Graves Protection and Repatriation Act Requirements</u></b> .....	GM 186
<b>6.36</b>	<b><u>Hybrid Procedures Under Subpart K</u></b> .....	GM 186
	(Also see Section 6.16.9)	
<b>6.37</b>	<b><u>Agreement State Issues</u></b> .....	GM 190
<b>6.38</b>	<b><u>Generic Security Issues</u></b> .....	GM 190

## CASE HISTORY INDEX

## CFR INDEX

## STATUTE INDEX