

responding to motions filed by other parties.

During the informal hearing, the licensing board may decide that further consolidation of issues or parties would simplify the overall conduct of informal hearings or materially reduce the time or resources devoted to the hearings. In these instances, the licensing board may direct such consolidation. The licensing board shall set forth the issues and/or parties to be consolidated and the reasons for such consolidation in a written order.

8. Status of the Design Certification Applicant, the NRC staff, and Requesting Party

The design certification applicant shall be a party in the informal hearing, with the right to submit written and oral presentations, propose questions to be asked by the licensing board of oral presenters, and file and submit appropriate motions.

The NRC staff shall not be a party in the informal hearing but shall be available in the informal hearing to answer licensing board questions about the FSER or the proposed rule, provide additional information or documentation with respect to the design certification, and provide other assistance that the licensing board may request without the NRC staff assuming the role of a party in the informal hearing.

A party whose hearing requests have been granted with respect to a particular controverted matter shall not participate with respect to any controverted matter on which the party was not granted a hearing. For example, if Person 1 has been authorized as a party on Issue A and Person 2 has been authorized as a party on Issue B, then Person 1 may participate only in the informal hearing on Issue A, and may not participate in the informal hearing on Issue B. Conversely, Person 2 may participate only in the informal hearing on Issue B, and may not participate in the informal hearing on Issue A.

9. Requests for Discovery

Any party may request the opportunity to conduct discovery against another party before the oral phase of the informal hearing. The request for discovery must:

- (i) Identify the type of discovery permitted under 10 CFR 2.740, 2.740a, 2.740a(b), 2.741, and 2.742 which the party seeks to use;
- (ii) Identify the subject matter or nature of the information sought to be obtained by discovery; and
- (iii) Explain with particularity the relevance of the information sought to

the controverted matter which is the subject of the hearing and why this information is indispensable to the presentation of the party's position on the controverted matter.

The request shall be filed with the licensing board, with copies of the request to be filed with the party against which discovery is sought, and the NRC staff. The requests must be received no later than the deadline specified by the Commission in its decision granting a party's hearing request (see Section C.5. above). A party against whom discovery is sought may file a response objecting to part or all of the request. Such a response must explain with particularity why the discovery request should not be granted.

The licensing board shall review all discovery requests and refer to the Commission those requests that it believes should be granted within 7 days after the date for receiving a party's objections to a discovery request. The licensing board shall issue a written decision explaining its basis for either referring the request to the Commission or declining to refer it. The written decision shall accompany the discovery requests which are referred by the licensing board to the Commission.

The Commission will determine whether to grant any discovery requests forwarded to it based upon the licensing board's decision, together with the request and the design certification applicant's response (and any NRC staff response requested by the licensing board). Discovery will be at the discretion of the Commission. In this regard, the Commission notes that there are several docket files in which the NRC staff has placed information and documents received from the design certification applicant for the System 80+ design certification review. The application was docketed on May 1, 1991 and assigned Docket No. 52-002. Correspondence relating to the application prior to this date was also addressed to Docket No. STN 50-470 and Project No. 675. This information includes the Design Control Document and the Technical Support Document for Amendments to 10 CFR part 51 Considering Severe Accidents Under NEPA for Plants of the System 80+ Design, Revision 2. Furthermore, the docket files contain NRC staff communications and documents, such as written questions and comments provided to the design certification applicant, and summaries of meetings held between the NRC staff and the design certification applicant. The NRC staff's bases for approving the System 80+ design are set forth in the FSER (NUREG-1462), dated August 1994. The

Commission also notes that each admitted party has already disclosed a substantial amount of information in its hearing request, relating both to bases for the party's position with respect to the controverted matter as well as information on the qualifications of the party (or its representatives and witnesses in the hearing).

As discussed above, much of the information documenting the NRC staff's review and approval of the design certification application has been routinely placed in the docket file. Furthermore, as discussed above in Section C.8., the NRC staff is not a party in an informal hearing. Therefore, the Commission has decided that in an informal hearing, the parties should not be afforded discovery against the NRC staff.

10. Conduct of Informal Hearing

If the Commission authorizes discovery, the licensing board shall establish a schedule for the conduct and completion of discovery. Normally, the licensing board should not permit more than one round of discovery. The Commission will not entertain any interlocutory appeals from licensing board orders resolving any discovery disputes or otherwise complaining of the scheduling of discovery.

Following the completion of discovery, the licensing board should issue an order setting forth the date of commencement of the oral phase of each informal hearing, and the date (no less than 30 days before the commencement of the oral phase of the hearing) by which parties must submit:

- (i) The identities and curriculum vitae of those persons providing oral presentations;
- (ii) The outlines of the oral presentations; and
- (iii) Any questions which a party would like the licensing board to ask.

The licensing board may schedule the oral phases of two or more informal hearings to be held during the same session. The licensing board shall publish a notice in the **Federal Register** announcing the commencement of the oral phase of the informal hearing(s). The notice shall set forth the place and time of the oral hearing session, the subject matter(s) of the informal hearing(s), a brief description of the informal hearing procedures, and a statement indicating that the public may observe the informal hearing.

Based upon the parties' outlines of the oral presentations and proposed questions, the licensing board should determine whether it has specific questions of the NRC staff with respect to the staff's review of the design