



April 1, 2026

U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852

Subject: Public Comment on NRC’s Streamlining Contested Adjudications in Licensing Proceedings (Docket ID NRC-2025-1501)

Dear NRC Staff,

The Nuclear Innovation Alliance (NIA) is an independent, non-profit, non-partisan “think-and-do” tank whose mission is to help create the conditions for success for new nuclear energy so it can play a major role as an energy security and climate solution. Through policy analysis, research, outreach, and education, NIA is catalyzing the next era of nuclear energy. We focus on regulatory modernization, federal and state policy, and enabling private investment to support new reactor commercialization while meeting national environmental and energy security goals.

NIA appreciates the opportunity to comment on the proposed Streamlining Contested Adjudications in Licensing Proceedings rulemaking published on March 3rd, 2026.

NIA supports maintaining the opportunity for the public to raise concerns while streamlining the hearing process, as described in our [Advancing Regulatory Efficiency: Lessons and Opportunities in NRC Licensing Practice](#) report. NIA believes "Contested hearings create an opportunity for the public to participate in the process of siting nuclear energy projects, and are required by the [Atomic Energy Act] AEA. They can, however, introduce lengthy delays, sometimes taking a year or more to resolve, take up significant NRC staff time, and impose significant costs on applicants. Given the cost and delay associated with these hearings, the NRC should make them as efficient as possible to ensure that only petitions meeting admissibility and standing standards proceed." Both the ADVANCE Act and EO 14300 established policy goals for the NRC to make its hearing processes more efficient. NIA believes that the proposed rule reflects the policy goals set forth by both.

NIA also supports the Commission issuing clear "guidance to the ASLB [Atomic Safety and Licensing Board] emphasizing consistent and strict application of standing and admissibility standards to exclude matters that are immaterial or would not significantly improve the license review" for contentions issued after the record closure date.

NIA applauds the Commission for proposing to issue clear deadlines and eliminate outdated Appendix B model milestones,¹ which was also a recommendation from our report.

In regard to the proposed rule, NIA offers the following comments:

1. The NRC proposed rule provides for standing determinations prior to contention admissibility determinations. Disconnecting the standing determination from the ASLB decision on contention admission is inconsistent with the Constitutional bar against hypothetical jurisdiction (see *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998)).² The NRC should apply judicial rules for standing rigorously. At a minimum, the NRC rule should be revised to grant standing only when the petitioner demonstrates a traceable contention that identifies a legal harm suffered that can be redressed and is ripe and not moot.³

This issue is particularly significant because granting standing in an NRC proceeding under the proposed rules also confers party status for purposes of appellate review under the Hobbs Act. As a result, the application of judicial standing rules is paramount, not only to conserve administrative resources for the ASLB and the applicant, but also to avoid unnecessary burdens on appellate courts. Improvidently granting party status before the NRC conveys an unwarranted right of appeal under the Hobbs Act. The ASLB must therefore perform a vital gatekeeping function for the Federal judiciary.

In *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), the U.S. Supreme Court established a three-part test for standing:

- Injury in Fact: A concrete and particularized, actual or imminent injury to a legally protected interest.
- Causal Connection: A causal connection between the injury and the conduct at issue.
- Redressability: A likelihood that the injury will be redressed by a favorable decision.

¹ 10 CFR Part 2 Appendix B provides “Model Milestones To Be Used By a Presiding Officer as a Guideline in Developing a Hearing Schedule for the Conduct of an Adjudicatory Proceeding in Accordance With 10 CFR 2.332.” <https://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-appb>

² Hypothetical jurisdiction refers to the practice of assuming jurisdiction to decide the merits of a dispute without first establishing that jurisdiction exists. The U.S. Supreme Court rejected this approach in *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94–95 (1998), holding that “[t]he requirement that jurisdiction be established as a threshold matter ‘spring[s] from the nature and limits of the judicial power of the United States’ and is ‘inflexible and without exception.’” (quoting *Mansfield, C. & L. M. R. Co. v. Swan*, [111 U. S. 379](#), 382 (1884)).

³ Alternately, the NRC could allow the petitioner standing based on a general interest in the proceeding, contingent upon a later finding by the ASLB finding that the petitioner has raised an injury-in-fact that is caused by the application and redressable by a favorable decision. As long as the ASLB rules on standing prior to or in conjunction with final decision, there would be a record demonstrating compliance with judicial standing for an appellate court to consider.

Standing therefore requires a determination that the petitioner has a legally cognizable harm — e.g., a real injury to a legally protected interest — that is traceable to the application and is redressable by a favorable decision.

To ensure that ASLB decisions on standing thoroughly evaluate traceability to and redressability of a legally cognizable harm, existing 10 CFR 2.309(d)(2) should be revised as follows (bold indicates added language):

“In ruling on a request for hearing or petition for leave to intervene, the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on such requests must determine **requestor/petitioner has standing by demonstrating an injury in fact caused by the matter subject to the hearing opportunity that is redressable by a favorable decision or order and**, among other things, whether the petitioner has an interest affected by the proceeding considering the factors enumerated in [paragraph \(d\)\(1\)](#) of this section.”

As drafted, the proposed rule would reverse the longstanding NRC practice of considering standing and contention admissibility together, thereby undermining the ASLB’s ability to determine whether the petitioner has identified a legal harm that is traceable and redressable. Without evaluating the contention itself, the ASLB cannot assess whether a legally cognizable harm exists.

Separating standing from contention admissibility would also magnify existing issues with the NRC’s use of “proximity standing” in reactor hearings. Presuming that a petitioner who lives within fifty miles of a reactor has standing does not establish a concrete, particularized injury. Many commenters have identified that such a presumption is not born out by experience as too often standing is granted to petitioners who raise only generalized concerns rather than concrete harms traceable to the application.⁴

An example illustrates how unpredictable the chain of events would be that would relate a reactor licensing action to causing an injury-in-fact based solely on residency. The first step in the chain presumes the petitioner is alleging an injury to a legally protected right to be free from unjustified exposure to radiation. The next step in the chain is to assume

⁴ For additional background and discussion of proximity standing versus traditional judicial standing, see: Repka, D. A., & Smith, T. R. (2010). PROXIMITY, PRESUMPTIONS, AND PUBLIC PARTICIPATION: REFORMING STANDING AT THE NUCLEAR REGULATORY COMMISSION. *Administrative Law Review*, 62(2), 583–601. <http://www.administrativelawreview.org/wp-content/uploads/2014/04/PROXIMITY-PRESUMPTIONS-and-Public-Participation-.pdf> and Burdick, S.J., Wagner, J.C., Gehin, J.C. “Recommendations to Improve the Nuclear Regulatory Commission Reactor Licensing and Approval Process.” April 2023. https://inldigitallibrary.inl.gov/sites/sti/sti/Sort_65730.pdf;

the radiation exposure is caused by the petitioner's fail to shelter-in-place. That failure to shelter could not be due to the petitioner's decision but would be caused by inadequate emergency planning or response. The chain presumes there was a lack of reasonable assurance of reactor safety that led to the accident. As illustrated by this example, "proximity standing" effectively assumes a legal injury is caused by a reactor accident coupled with failure to shelter-in-place or deficiencies in emergency planning based on generalized concerns about reactor safety. Even where such a chain of events is conceivable, it is difficult to characterize that chain is a proximate cause of a concrete injury. In practice, proximity standing too often results in the cost and delay of hearing proceedings and judicial review driven by hypothetical or theoretical rather than concrete concerns.

The Commission should consider revising standing rules (either in the regulations or Commission case law) for petitions involving advanced reactors to move away from "proximity standing" toward a traditional judicial standing concept (i.e., injury-in-fact, causation, and redressability). For example, if the petitioner is alleging harm from radiation exposure, the petitioner should demonstrate potential for such exposure (but see *Citizens Awareness Network, Inc. v. NRC*, 59 F.3d 285 at n.4). If the petitioner is alleging environmental harm, such as to an endangered species, the petitioner should have a demonstrable harm traceable to the loss of that species (see, *Lujan*, 504 U.S. at 563).

2. While NIA appreciates the NRC proposing an additional screen to ensure only critical contentions are considered after the Standard Record Closure Date (SRCDD), the NRC should apply these standards at all times during the proceeding. One longstanding criticism of the NRC proceedings is that the proceedings often spend significant effort on issues not critical to the NRC licensing decision. If an issue raised by a contention is trivial, there is no meaningful justification to consider it in adjudication whether it is submitted before or after the SRCDD.
3. NIA recommends further revisions to the rule to encourage summary disposition for narrow or record-based issues, so hearings are reserved for matters that genuinely and significantly affect licensing outcomes. For subpart L proceedings, the revised rule continues to invoke the subpart G standards for evaluating summary disposition motions and does not revise the standards to reflect the less formal nature of the subpart L proceeding.

Specifically, unlike the trial-type hearing under subpart G, subpart L is intended to be more streamlined. In subpart L proceedings, the ASLB plays a more active role in identifying and framing issues. Accordingly, the motion for summary disposition should be granted unless the ASLB has additional questions to be addressed, rather than

proceeding simply because there is a disagreement between the parties. Furthermore, when the ASLB identifies additional issues it wishes to pursue that preclude summary disposition, identifying those issues should help the parties prepare for the hearing.

In addition, the last sentence of 10 CFR 2.710(d)(2) is ambiguous in a proceeding where the staff does not participate, because it is the staff that issues the ultimate decision on granting a construction permit. To fix this, the last sentence should be revised to read, “If by the grant of summary disposition, no matters are left in dispute, the ASLB should proceed to issue a final decision.”

4. The NRC eliminates proceedings for license transfer pursuant to subpart M, reasoning that ASLB should be primarily responsible for resolving the types of issues typically raised in such transfer proceedings and that such ASLB hearings can be held within the 8 months previously required of Commission-led proceedings under subpart M.

License transfers are generally difficult to unwind once initiated. Therefore, subpart M assigned such reviews to the Commission because if the ASLB approved a transfer, and that transfer was appealed, a stay would likely be granted. Experience to date with subpart M proceedings has been timely and efficient.

The NRC should retain the subpart M proceedings to ensure that license transfers can be completed in a timely manner. The NRC could revisit the need for subpart M after experience has been gained with the revised subpart L proceedings and such experience demonstrates that such proceedings — including any subsequent appeals to the Commission — can be completed more efficiently compared to subpart M.

5. The proposed rule does not fully address the potential disruption if the Commission does not promptly rule on interlocutory appeal of a preliminary ASLB ruling. To expedite court review of such interlocutory appeals to the Commission, the NRC should establish that the preliminary ASLB decision becomes a final agency action if the Commission does not rule by the deadline. Currently, the proposed rule provides that the Commission can delay its ruling on the interlocutory appeal in its discretion. Specifically, for interlocutory appeals, the Commission is allotted 45 days “unless, in the judgment of the Commission, the complexity of the case necessitates additional time for a decision.”

Given the implicit importance of a preliminary ASLB decision in a complex case that warrants an interlocutory appeal, the ASLB decision should become final at the end of the 45 days. At that point, the clock for an appellate decision will start to run. A subsequent Commission decision after 45 days would moot the appeal. However, allowing indefinite delay until the Commission acts undermines the purpose of establishing a clear deadline. Once the ASLB has ruled, its ruling should provide an adequate record for a party to take an appeal to a court of appeals.

6. NIA recommends revising the proposed rule to require that the notice of docketing include the notice of a hearing opportunity. To further improve efficiency, Part 2 should be revised to include in the rule the necessary administrative material for a hearing notice, at least on a default basis that can be modified in the docket notice or subsequently by the ASLB. Such provisions already exist in Part 2 for the location of the hearing (see 10 CFR 2.104(a) n.1), so other provisions can be efficiently handled similarly.

The proposed rule revises the standard for a timely notice from “reasonable” after docketing to “as soon as practicable” after docketing. Inadequate notice can have heavy consequences;⁵ therefore, there should be no delay between the notice of docketing and the notice of hearing. Similarly, for the review of a petition pursuant to 10 CFR 2.341(c)(1), the ASLB decision should be final and appealable after 120 days. If the Commission later rules on the petition, the appeal would be moot. However, promptly starting review by the Appellate Court will help ensure more timely resolution and facilitate efficient licensing.

7. Under the proposed rule, the staff participation in a contested hearing is optional. Not knowing whether staff will participate can complicate the hearing preparations for parties, especially if the staff is unable to take a position on the issues in controversy. It would be helpful for litigation planning for the parties to be able to better anticipate whether the staff will participate, especially when that participation may entail significant delay because of the staff’s need to delay taking a position on the issues in controversy. Circumstances should be rare when the staff participates without a position; therefore the rule should specify clear criteria for these circumstances. NIA recommends that the rule be revised to require the staff to ask the ASLB for permission to participate.
8. The NRC proposes a requirement for all parties except for individuals proceeding pro se to have counsel in order to speed the hearing process. Instead, because the ASLB lacks the professional oversight powers held by courts, the NRC should add an approval process. This process should include a transparent mechanism for when and how referrals to State bar counsel will be made and establish the expectation that such referrals will be made by the ASLB and only after the offending counsel has had due process. In explaining its preference to rely solely on generalist counsel, the NRC has not justified the deviation from longstanding federal agency practice, including by the NRC, that recognizes the value of allowing representation by qualified lay experts.

The NRC should consider the experience in proceedings before other agencies to inform this rule. For example, the Department of Veterans Affairs allows lay representatives as

⁵ For comparison, in civil proceedings the consequence on appeal of an inadequate notice is that the judgment cannot be held against a party who received inadequate notice.

well as attorneys when qualified to represent veterans (see 38 CFR 14.626-637). The proposed NRC rule is both overinclusive and underinclusive in trying to meet its goal of expediting proceedings. The proposed rule may allow unqualified generalist attorneys while precluding qualified lay representatives, law students, and paralegals who may expedite the proceedings.

9. In accordance with the Nuclear Waste Policy Act (NWPA), the NRC regulations provide for hybrid proceedings pursuant to 10 CFR Part 2 Subpart K for certain matters related to storage of spent fuel at existing facilities. These hybrid proceedings are intended to simplify and expedite adjudication of expansion of spent fuel storage challenges. While the NWPA requires these expedited hybrid proceedings to be used for such matters, the NRC has the discretion to conclude that other matters of comparable complexity could also be expedited by subpart K. For example, the extension of the license for the Independent Spent Fuel Storage Facility at Diablo Canyon was conducted under subpart L but likely would have been expedited under subpart K had that alternative been allowed. (see, generally, Pacific Gas and Electric (Diablo Canyon ISFSI license extension) LBP-23-07 and LBP-23-08 (2023)). The NRC should revise subpart K to allow use of these hybrid proceedings when requested by a party and when its use is expected to expedite proceedings. The Commission or ASLB should grant such requests if the subject matter is comparable in complexity to those matters where use of the hybrid proceedings are now required.

These NIA comments preserve the opportunity for the public to raise meaningful concerns, which remains important in conjunction with carefully streamlining the hearing process. NIA would like to thank NRC for the opportunity to comment on this proposed rule. If you have any questions, please contact R. Budd Haemer at rhaemer@nuclearinnovationalliance.org.

Sincerely,
Judi Greenwald
President & CEO
Nuclear Innovation Alliance